

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION MDL No. 2804  
OPIATE LITIGATION

Case No. 17-md-2804

Judge Dan Aaron

This document relates to: Polster

County of Cuyahoga v. Purdue  
Pharma L.P., et al.

City of Cleveland, Ohio v. Purdue  
Pharma L.P., et al.

The County of Summit, Ohio, et al.  
v. Purdue Pharma L.P., et al.

Case No. 1:18-OP-45132

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Videotaped deposition of  
BRAD GESSNER

December 3, 2018

9:12 a.m.

Taken at:

Brennan, Manna & Diamond  
75 East Market Street  
Akron, Ohio

Renee L. Pellegrino, RPR, CLR

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of Summit County and City of Akron:</p> <p>3 Motley Rice</p> <p>4 KRISTEN M HERMIZ, ESQ</p> <p>5 FREDERICK C BAKER, ESQ</p> <p>6 28 Bridgeside Boulevard</p> <p>7 Mt Pleasant, South Carolina 29464</p> <p>8 (843) 216-9343</p> <p>9 khermiz@motleyrice.com</p> <p>10 fbaker@motleyrice.com</p> <p>11 On behalf of Walmart, Inc.:</p> <p>12 Jones Day</p> <p>13 KRISTIN S M MORRISON, ESQ</p> <p>14 North Point, 901 Lakeside Avenue</p> <p>15 Cleveland, Ohio 44114-1190</p> <p>16 (216) 586-3939</p> <p>17 kmorrison@jonesday.com</p> <p>18 On behalf of Endo Pharmaceuticals, Inc., Endo</p> <p>19 Health Solutions, Inc., Par Pharmaceuticals,</p> <p>20 Inc. and Par Pharmaceutical Companies, Inc.:</p> <p>21 Baker &amp; Hostetler</p> <p>22 CAROLE S RENDON, ESQ</p> <p>23 TERA N COLEMAN, ESQ</p> <p>24 127 Public Square</p> <p>25 Suite 2000</p> <p>Cleveland, Ohio 44114-1214</p> <p>(216) 621-0200</p> <p>crendon@bakerlaw.com</p> <p>tcoleman@bakerlaw.com</p> <p>On behalf of CVS of Indiana, LLC and CVS Rx</p> <p>Services, LLC:</p> <p>Zuckerman Spaeder</p> <p>DANIEL P MOYLAN, ESQ</p> <p>100 East Pratt Street</p> <p>Baltimore, Maryland 21202-1031</p> <p>(410) 332-1031</p> <p>dmoylan@zuckerman.com</p> <p>~ ~ ~ ~ ~</p>	<p style="text-align: right;">Page 4</p> <p>1 TRANSCRIPT INDEX</p> <p>2</p> <p>3 APPEARANCES .....2</p> <p>4 INDEX OF EXHIBITS .....5</p> <p>5 INDEX OF OBJECTIONS .....7</p> <p>6</p> <p>7 EXAMINATION OF BRAD GESSNER:</p> <p>8 BY MS. WOODS .....14</p> <p>9 BY MS. RENDON .....325</p> <p>10</p> <p>11 AFTERNOON SESSION .....174</p> <p>12</p> <p>13 REPORTER'S CERTIFICATE .....349</p> <p>14</p> <p>15 EXHIBIT CUSTODY - RETAINED BY COURT REPORTER</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES, CONT'D:</p> <p>2 On behalf of McKesson Corporation:</p> <p>3 Covington &amp; Burling LLP</p> <p>4 RAE WOODS, ESQ</p> <p>5 One CityCentre</p> <p>6 850 Tenth Street, NW</p> <p>7 Washington, D C 20001-4956</p> <p>8 (202) 662-2000</p> <p>9 rwoods@cov.com</p> <p>10 - and -</p> <p>11 Covington &amp; Burling LLP</p> <p>12 ASEEM P PADUKONE, ESQ</p> <p>13 One Front Street</p> <p>14 San Francisco, California 94111-5356</p> <p>15 (415) 591-7059</p> <p>16 apadukone@cov.com</p> <p>17 On behalf of AmerisourceBergen:</p> <p>18 (Via Telephone and Veritext Virtual Stream)</p> <p>19 Reed Smith</p> <p>20 NICHOLAS R RODRIGUEZ, ESQ</p> <p>21 Three Logan Square</p> <p>22 1717 Arch Street</p> <p>23 Suite 3100</p> <p>24 Philadelphia, Pennsylvania 19103</p> <p>25 (215) 851-8100</p> <p>nrodriguez@reedsmith.com</p> <p>On behalf of Cardinal Health:</p> <p>Porter Wright Morris &amp; Arthur LLP</p> <p>JILL G OKUN, ESQ</p> <p>950 Main Avenue</p> <p>Suite 500</p> <p>Cleveland, Ohio 44113</p> <p>(216) 443-9000</p> <p>jokun@porterwright.com</p> <p>ALSO PRESENT: Kurt Henschel, Videographer</p> <p>~ ~ ~ ~ ~</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX OF EXHIBITS</p> <p>2</p> <p>3 Number Description Marked</p> <p>4</p> <p>5 Exhibit 1 County of Summit 2018 Operating 22</p> <p>Budget Beginning Bates Number</p> <p>6 SUMMIT_000008414</p> <p>7 Exhibit 2 County of Summit 2017 Operating 25</p> <p>Budget Beginning Bates Number</p> <p>8 SUMMIT_000007551</p> <p>9 Exhibit 3 County of Summit 2016 Operating 25</p> <p>Budget Beginning Bates Number</p> <p>10 SUMMIT_000006663</p> <p>11 Exhibit 4 Announcement Titled "The Heroin 38</p> <p>Epidemic" Beginning Bates Number</p> <p>12 SUMMIT_001468949</p> <p>13 Exhibit 5 Media Release Titled "Heroin 57</p> <p>Users Face Potentially Fatal</p> <p>14 Ingredient" dated January 25,</p> <p>2006, Beginning Bates Number</p> <p>15 SUMMIT_000350711</p> <p>16 Exhibit 6 Ohio Department of Health News 68</p> <p>Release Titled "Illicit Fentanyl</p> <p>17 Continues to Fuel Increase in</p> <p>Drug Overdose Deaths in Ohio"</p> <p>18 dated August 25, 2016, Beginning</p> <p>Bates Number AKRON_000271913</p> <p>19</p> <p>20 Exhibit 7 "Opiate Overdose Investigations 81</p> <p>&amp; Prosecutions" PowerPoint</p> <p>21 Presentation Slides dated June</p> <p>20, 2018</p> <p>22 Exhibit 8 Grant Application Beginning 98</p> <p>Bates Number SUMMIT_000064898</p> <p>23</p> <p>24 Exhibit 9 Information Bulletin dated 171</p> <p>January 2001, Bates Numbered</p> <p>SUMMIT_2051829</p> <p>25</p>

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<p style="text-align: right;">Page 14</p> <p>1 Burling, on behalf of McKesson.  2 THE VIDEOGRAPHER: Anyone on the  3 telephone?  4 MS. WOODS: Is there anyone on the  5 telephone?  6 BRAD GESSNER, of lawful age, called for  7 examination, as provided by the Federal Rules  8 of Civil Procedure, being by me first duly sworn,  9 as hereinafter certified, deposed and said as  10 follows:  11 EXAMINATION OF BRAD GESSNER  12 BY MS. WOODS:  13 Q. Good morning.  14 A. Good morning.  15 Q. As I mentioned before, I'm Rae Woods  16 from the law firm Covington &amp; Burling and I  17 represent McKesson Corporation.  18 Could you please state your name for  19 the record?  20 A. Brad Gessner.  21 Q. How do you spell Gessner?  22 A. G-e-s-s-n-e-r.  23 Q. Where are you currently employed?  24 A. Summit County Prosecutor's Office.  25 Q. What's your job title?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. How long have you worked for the  2 Summit County Prosecutor's Office?  3 A. 17 and a half years.  4 Q. And what do your job  5 responsibilities involve?  6 A. As chief counsel, I am immediately  7 under the elected county prosecutor, and I  8 supervise all aspects of the office.  9 Q. Does that include the criminal  10 division?  11 A. Yes, it does.  12 Q. And does that include supervision of  13 drug-related crimes?  14 A. Yes, it does.  15 Q. During your career as a prosecutor,  16 have you ever known a time when the abuse of  17 drugs was not a problem in Summit County?  18 A. During my time at Summit County, it  19 has been an abuse -- I mean, it has been a  20 problem.  21 Q. So since 2001, during your time at  22 the office, you have known drugs, abuse of  23 drugs, to be a problem in Summit County; is that  24 correct?  25 MS. HERMIZ: Objection to form.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. I am chief counsel.  2 Q. Have you ever testified in court  3 before?  4 A. No.  5 Q. Have you ever been deposed before?  6 A. No.  7 Q. Have you ever testified in any form,  8 like a city council meeting or a legislative  9 committee, for example?  10 A. No.  11 Q. Have you put witnesses on the stand  12 before?  13 A. Yes, I have.  14 Q. You understand you're testifying  15 under oath today?  16 A. Yes.  17 Q. I'm going to do my best to ask you  18 questions that are easy to understand, but if  19 you don't understand my question, you can ask me  20 to rephrase it, okay?  21 A. Okay.  22 Q. And if you do answer my question,  23 can I take that as a sign that you understood  24 it?  25 A. Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Drugs in our society are always a  2 problem.  3 Q. And during your career as a  4 prosecutor at Summit County, drug abuse has  5 always been a problem, correct?  6 A. We've handled drug cases from my  7 first day working there until the present.  8 Q. Thank you.  9 As you sit here today, what would  10 you say the most significant drug problem facing  11 Summit County is?  12 MS. HERMIZ: Objection to form.  13 A. Could you repeat that or rephrase  14 it?  15 Q. As we sit here today, what is the  16 most significant drug problem facing the county?  17 A. The access to drugs, individuals who  18 are addicted to drugs, the sale of drugs, the  19 cost of the drugs, the impact on the community,  20 treatment, incarceration, all of those. I don't  21 know if you can single out any one of them.  22 Q. What drug poses the most significant  23 problem? What type of drug poses the most  24 significant problem to the county currently?  25 MS. HERMIZ: Objection to form.</p>

<p style="text-align: right;">Page 18</p> <p>1 A. Currently, we have an epidemic 2 related to opiates, heroin, fentanyl, 3 carfentanil. We also have cocaine issues. We 4 also have issues with meth amphetamines. We 5 have issues with marijuana. All forms of drugs, 6 but the drug that is related to more deaths than 7 anything else would be the opiates. 8 Q. When you say "opioid," what is your 9 definition of an opioid? 10 A. Opioids are drugs that are from a 11 stem relating to that, heroin again, 12 prescription drugs also included into that. As 13 far as a list of them, I do not have that. 14 Q. But you understand opioids to 15 include prescription opioids, correct? 16 A. Yes. 17 Q. Do you understand it to include 18 heroin? 19 A. Yes. 20 Q. Do you understand opioids to include 21 fentanyl? 22 A. Yes. 23 Q. And carfentanil? 24 A. Yes. 25 Q. Are there other types of drugs that</p>	<p style="text-align: right;">Page 20</p> <p>1 that I have. 2 Q. You previously stated that a number 3 of drugs currently pose a problem in Summit 4 County, including heroin, fentanyl, carfentanil, 5 meth, cocaine and marijuana. Are there other 6 drugs that currently pose a significant problem 7 in the county? 8 MS. HERMIZ: Object to the form. 9 A. I'm sure there are other drugs. 10 Q. What are they? 11 A. Again, off the top of my head, I 12 don't have those, but if you look through the 13 cases we've indicted, each one of those 14 basically has a drug set out. So I don't have 15 the case-by-case notation of the drugs. 16 Q. If you had to rank the two most 17 significant type of drugs posing a problem for 18 the county, what would those two drugs be 19 currently? 20 A. Currently, I think that we would 21 look at, again, opiate-related drugs, and meth 22 amphetamines. 23 Q. And within the opioid-related drugs, 24 which specific drugs would you rank? 25 A. I don't think I can rank one over</p>
<p style="text-align: right;">Page 19</p> <p>1 you understand to fall within the category 2 opioid? 3 A. Yes. I believe OxyContin, 4 oxycodone, other drugs along those lines. 5 Again, I don't have a list in front of me. 6 Q. Are you familiar with a drug 7 synthetics opioid called U-47700? 8 A. Not off the top of my head I'm not. 9 Q. When we talk about opioids today, is 10 it your understanding that that would include 11 meth amphetamine? 12 A. I don't know. You would need to let 13 me know what you are speaking of. 14 Q. Based on your experience, is meth 15 amphetamine considered an opioid? 16 A. I don't consider it one. 17 Q. What about cocaine? Would you 18 consider cocaine an opioid? 19 A. No. 20 Q. And how about marijuana? Is 21 marijuana an opioid? 22 A. No. 23 Q. What is the basis for your knowledge 24 about opioids? 25 A. Prosecuting for the number of years</p>	<p style="text-align: right;">Page 21</p> <p>1 the other at this point. 2 Q. For how long have opioids posed a 3 significant problem to the county? 4 A. I would think going back probably at 5 least ten years. Probably more significantly in 6 the last five years would be when we've started 7 to see the number of deaths, again, wholesale 8 loss of life related to those drugs, which was 9 out of the ordinary from what we had been 10 dealing with up until then. 11 Q. So going back ten years ago, roughly 12 2008, which drugs would you rank as the highest 13 problems for Summit County in 2008? 14 MS. HERMIZ: Objection to form. 15 A. I don't know that. 16 Q. Were you working at the Summit 17 County Prosecutor's Office in 2008? 18 A. Yes. 19 Q. But you aren't aware of what drugs 20 caused the biggest problems in the county? 21 A. I'm not unaware. I can't rank them. 22 I can tell you, again, heroin, prescription 23 drugs along the lines there, cocaine, meth 24 amphetamines, all of those. As far as ranking 25 them, I don't have that information.</p>



<p style="text-align: right;">Page 22</p> <p>1 Q. Mr. Gessner, are you involved in the</p> <p>2 budget for your office?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And what is the nature of your</p> <p>5 involvement in the budget process?</p> <p>6 A. I review the budget. We discuss</p> <p>7 what our needs are. We receive normally a</p> <p>8 target of what -- from the county's budget</p> <p>9 office on where they would expect us to be, and</p> <p>10 we then look at, again, our manpower, look at</p> <p>11 our needs, and we do proposals to them, and I</p> <p>12 normally present the budget to county council.</p> <p>13 Q. Are you involved in determining the</p> <p>14 office's priorities?</p> <p>15 MS. HERMIZ: Objection to form.</p> <p>16 A. I work with the county prosecutor in</p> <p>17 determining the priorities for the office.</p> <p>18 - - - - -</p> <p>19 (Thereupon, Gessner Deposition</p> <p>20 Exhibit 1, County of Summit 2018</p> <p>21 Operating Budget Beginning Bates</p> <p>22 Number SUMMIT_000008414, was marked</p> <p>23 for purposes of identification.)</p> <p>24 - - - - -</p> <p>25 Q. I'm handing you what's been marked</p>	<p style="text-align: right;">Page 24</p> <p>1 in order to try to get these drugs off the</p> <p>2 street."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. "Continue to collaborate with</p> <p>6 community partners in seeking end to the</p> <p>7 heroin/fentanyl epidemic and find ways to</p> <p>8 eliminate deaths from these drugs."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes, you did.</p> <p>11 Q. So according to the 2018 budget, one</p> <p>12 of your -- the criminal division's chief</p> <p>13 objectives is to focus specifically on heroin</p> <p>14 and fentanyl, correct?</p> <p>15 MS. HERMIZ: Objection to form.</p> <p>16 A. Yes.</p> <p>17 Q. And the budget document refers to</p> <p>18 the epidemic as "the heroin/fentanyl epidemic,"</p> <p>19 correct?</p> <p>20 A. That is the language we used, yes.</p> <p>21 Q. And there's no mention in this</p> <p>22 section about prescription opioids, right?</p> <p>23 A. In those words, no.</p> <p>24 Q. And there's no use of the broader</p> <p>25 term, "opioids," correct?</p>
<p style="text-align: right;">Page 23</p> <p>1 as Exhibit 1. Do you recognize this to be the</p> <p>2 County of Summit's operating budget for the year</p> <p>3 2018?</p> <p>4 A. I don't believe I've ever seen the</p> <p>5 entire county's budget. I've seen our office's</p> <p>6 budget.</p> <p>7 Q. I should be more specific. This is</p> <p>8 an excerpt from the operating budget for the</p> <p>9 prosecutor's office. Have you seen this before?</p> <p>10 A. Let me look through it first.</p> <p>11 MS. WOODS: It's Bates number SUMMIT</p> <p>12 8414.</p> <p>13 Q. I'm just going to be asking you</p> <p>14 about page 322 of the document, which is Bates</p> <p>15 SUMMIT 7872. Actually, 324, Bates 8737.</p> <p>16 I'd like to direct your attention to</p> <p>17 page 324, the "Program Goals &amp; Objectives"</p> <p>18 section. Number 2 states that your office's</p> <p>19 criminal division goal and objective is to</p> <p>20 "Focus on most serious offenses," and it lists</p> <p>21 as examples homicides and sexual assaults,</p> <p>22 correct?</p> <p>23 A. And etc.</p> <p>24 Q. Etc. And it goes on to state,</p> <p>25 "Continue to prosecute heroin/fentanyl dealers</p>	<p style="text-align: right;">Page 25</p> <p>1 A. That word is not used.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Gessner Deposition</p> <p>4 Exhibit 2, County of Summit 2017</p> <p>5 Operating Budget Beginning Bates</p> <p>6 Number SUMMIT_000007551, was marked</p> <p>7 for purposes of identification.)</p> <p>8 - - - - -</p> <p>9 (Thereupon, Gessner Deposition</p> <p>10 Exhibit 3, County of Summit 2016</p> <p>11 Operating Budget Beginning Bates</p> <p>12 Number SUMMIT_000006663, was marked</p> <p>13 for purposes of identification.)</p> <p>14 - - - - -</p> <p>15 Q. I'd like to hand you what has been</p> <p>16 marked as Exhibit 3 and Exhibit 2. Exhibit 2</p> <p>17 begins SUMMIT 7551. I'm going to turn your</p> <p>18 attention to page 322 of that exhibit. This is</p> <p>19 the 2017 operating budget for the Summit County</p> <p>20 Prosecutor, and page 322 lists again program</p> <p>21 goals and objectives for the criminal division.</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And, once again, the language under</p> <p>25 program's goals and objectives is identical to</p>

<p style="text-align: right;">Page 26</p> <p>1 the language that was used in that 2018 budget, 2 correct?</p> <p>3 MS. HERMIZ: Objection to form.</p> <p>4 A. The language in program goal number 5 2 is the same as in both documents.</p> <p>6 Q. Okay. So, once again, in 2017 your 7 office referred to it as "the heroin/fentanyl 8 epidemic," correct?</p> <p>9 A. Yes. And we also refer to drugs as 10 all different items. Again, the heroin/fentanyl 11 epidemic did not stop us from prosecuting 12 carfentanil, did not stop us from prosecuting 13 other things. So we, as prosecutors, at times 14 will name things that may be different than what 15 we're actually doing.</p> <p>16 Q. But looking to the actual language 17 used in your budget, you specifically focus your 18 attentions on "heroin/fentanyl dealers in order 19 to try to get these drugs off the street," 20 correct?</p> <p>21 MS. HERMIZ: Objection to form.</p> <p>22 A. We specifically use the words 23 "heroin/fentanyl," but whether that was our 24 focus is different.</p> <p>25 Q. Okay. And then, finally, I'm</p>	<p style="text-align: right;">Page 28</p> <p>1 up until 2016 your office did not identify as a 2 program goal and objective specifically any drug 3 crimes?</p> <p>4 A. I don't -- off the top of my head 5 without seeing those, I don't recall that.</p> <p>6 Q. Would you have any reason to suspect 7 otherwise?</p> <p>8 MS. HERMIZ: Objection to form.</p> <p>9 A. Again, I don't know. I have not 10 reviewed those.</p> <p>11 Q. Mr. Gessner, tell us why the 12 prosecution of heroin and fentanyl dealers 13 became a priority, according to your budgets, in 14 2017.</p> <p>15 MS. HERMIZ: Objection to form.</p> <p>16 A. It has been a priority for some 17 time. Again, based on the number of deaths 18 occurring, based on the number of overdoses 19 occurring, that became very critical for us to 20 do something beyond what -- again, center the 21 focus on that, where it had not been before.</p> <p>22 Q. So perhaps you didn't understand my 23 question, and let me rephrase it so it's clear.</p> <p>24 Why did your office wait until 2017 25 to list a drug crime as one of its program goals</p>
<p style="text-align: right;">Page 27</p> <p>1 handing you what has been marked as Exhibit 3. 2 This is the Summit County Prosecutor budget for 3 2016. I'm directing your attention to page 320. 4 Once again, we're going to look at that "Program 5 Goals &amp; Objectives" section.</p> <p>6 And in 2016 we don't see the same 7 language referring to heroin and fentanyl 8 issues, do we?</p> <p>9 A. No. We still see the etc. on the 10 most serious offenses there, but we do not see 11 those specifically listed.</p> <p>12 Q. And you're referring to program 13 goals and objectives number 2, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it states, "Focus on the most 16 serious offenses, homicides, sexual assaults, 17 etc. to continue to obtain effective results." 18 Is that what it says?</p> <p>19 A. Yes.</p> <p>20 Q. So there's no specific mention of 21 any type of drug crime here, correct?</p> <p>22 A. No specific mention.</p> <p>23 Q. Are you aware that throughout the 24 history -- strike that.</p> <p>25 Are you aware that throughout 2007</p>	<p style="text-align: right;">Page 29</p> <p>1 and objectives in its budget?</p> <p>2 A. Again, if you look into each one of 3 those, there was -- there's etc. Drugs have 4 always been a priority in our office, from the 5 first day I've been there until now.</p> <p>6 Q. Was there a particular reason your 7 office waited until 2017 to specifically raise 8 particular drugs in the goals and objectives 9 section of your budgets?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. It again -- the drugs are included 12 in the etc. in every one of those.</p> <p>13 Q. Apart from the drugs that you've 14 already mentioned, which other drugs have been a 15 problem in your county?</p> <p>16 A. All illegal drugs are a problem in 17 this county.</p> <p>18 Q. Have you had issues with bath salts?</p> <p>19 A. I've not.</p> <p>20 Q. How about ecstasy?</p> <p>21 A. I have not.</p> <p>22 Q. Have you had issues with other 23 prescription drugs that are not opioids?</p> <p>24 A. I have not.</p> <p>25 Q. And when you say you have not,</p>



<p style="text-align: right;">Page 30</p> <p>1 you're referring to yourself, not your office?</p> <p>2 A. Yes.</p> <p>3 Q. To your knowledge, has your office</p> <p>4 had issues with other prescription drugs that</p> <p>5 are not opioids?</p> <p>6 A. Yes. We have prosecuted other</p> <p>7 prescription drugs that are not opioids.</p> <p>8 Q. What type of drugs?</p> <p>9 A. Off the top of my head, I can't give</p> <p>10 you the names of those drugs, but I can tell</p> <p>11 you, in going through them, I know we've handled</p> <p>12 those cases.</p> <p>13 Q. What other types of drugs has your</p> <p>14 office prosecuted or investigated apart from the</p> <p>15 ones we've already discussed?</p> <p>16 A. We've -- we've prosecuted -- and I</p> <p>17 can recall one on birth control, illegal</p> <p>18 dispensing of those. So it's any type of drug</p> <p>19 that is not legally obtained, we are going to</p> <p>20 prosecute that.</p> <p>21 Q. Has your office investigated or</p> <p>22 prosecuted steroids?</p> <p>23 A. I'm sure we have.</p> <p>24 Q. Has your office investigated or</p> <p>25 prosecuted Xanax?</p>	<p style="text-align: right;">Page 32</p> <p>1 a more -- more experienced in there. I then</p> <p>2 became a supervisor.</p> <p>3 Q. Okay. And what types of crimes did</p> <p>4 you prosecute when you first began at the</p> <p>5 office?</p> <p>6 A. Any crime that was charged that was</p> <p>7 a felony.</p> <p>8 Q. So did you prosecute some drug</p> <p>9 crimes?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Did you prosecute some homicide</p> <p>12 crimes?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Were you in a particular unit or</p> <p>15 division of the office?</p> <p>16 A. Not when I initially came.</p> <p>17 Q. And when you became a supervisor,</p> <p>18 what types of cases were you supervising?</p> <p>19 A. All cases.</p> <p>20 Q. Were you overseeing a particular</p> <p>21 division or department?</p> <p>22 A. No; no. The criminal -- the</p> <p>23 supervisors are in the criminal division. They</p> <p>24 are basically covering the entire docket.</p> <p>25 Q. Did you ever use the Grand Jury to</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I'm sure we have.</p> <p>2 Q. Has your office investigated or</p> <p>3 prosecuted weight loss medications, prescription</p> <p>4 weight loss medications?</p> <p>5 A. We may have.</p> <p>6 Q. In 2001, when you first joined the</p> <p>7 office, was the office investigating and</p> <p>8 prosecuting heroin at that time?</p> <p>9 A. The office was not investigating.</p> <p>10 We were prosecuting cases. Law enforcement does</p> <p>11 investigations and then they bring them to the</p> <p>12 prosecutor. We don't go out and investigate on</p> <p>13 our own.</p> <p>14 Q. Okay. Fair enough.</p> <p>15 So when you joined the office, was</p> <p>16 your office prosecuting heroin cases?</p> <p>17 A. If those cases were brought to us by</p> <p>18 law enforcement, yes, we were.</p> <p>19 Q. And were such cases brought to your</p> <p>20 office at the time you joined the office?</p> <p>21 A. In 2001, I cannot tell you that from</p> <p>22 my memory.</p> <p>23 Q. Okay. When you joined the office,</p> <p>24 what was your position?</p> <p>25 A. I was a courtroom prosecutor. I was</p>	<p style="text-align: right;">Page 33</p> <p>1 investigate crimes?</p> <p>2 A. I've presented before the Grand</p> <p>3 Jury, but actually had the Grand Jury go out and</p> <p>4 investigate on their own, no.</p> <p>5 Q. But you've issued Grand Jury</p> <p>6 subpoenas to further investigations?</p> <p>7 A. We have issued subpoenas on cases</p> <p>8 that we've received. As far as the Grand Jury</p> <p>9 conducting their own investigation, I don't</p> <p>10 believe that's occurred.</p> <p>11 Q. When was the first time you</p> <p>12 prosecuted a heroin case in the Summit County</p> <p>13 Prosecutor's Office?</p> <p>14 A. I can't recall that.</p> <p>15 Q. Can you estimate?</p> <p>16 A. If I would have had a heroin case in</p> <p>17 2001, I would have prosecuted it.</p> <p>18 Q. Do you believe you prosecuted any</p> <p>19 heroin cases while you were a line prosecutor</p> <p>20 before you became a supervisor?</p> <p>21 A. I may have.</p> <p>22 Q. You don't recall one way or the</p> <p>23 other?</p> <p>24 A. I do not recall.</p> <p>25 Q. To your knowledge, was the Summit</p>

<p style="text-align: right;">Page 34</p> <p>1 County Prosecutor's Office prosecuting heroin 2 cases in the 1990s?</p> <p>3 MS. HERMIZ: Objection to form.</p> <p>4 A. I was not in the office at the time.</p> <p>5 Q. Do you have any knowledge as to 6 whether the office was prosecuting heroin in the 7 1990s?</p> <p>8 A. I do not.</p> <p>9 Q. You haven't had any conversations 10 with law enforcement or with colleagues about 11 that issue?</p> <p>12 A. No, I have not.</p> <p>13 Q. What types of heroin do you see in 14 the cases prosecuted by the Summit County's 15 Prosecutor's Office?</p> <p>16 A. I don't normally break it down, but 17 at one point we had what was called black tar 18 heroin. Others, I don't have -- know any 19 particular names given to them.</p> <p>20 Q. What's your understanding on where 21 the heroin comes from?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. I don't know where -- as far as 24 where it's manufactured or where it's created, 25 no, I don't have that information.</p>	<p style="text-align: right;">Page 36</p> <p>1 1987.</p> <p>2 Q. Okay. So it's your understanding 3 that heroin was more prevalent before 1986, 4 before users switched from heroin to crack and 5 cocaine?</p> <p>6 A. Yes.</p> <p>7 Q. And for how long did users focus on 8 crack and cocaine before shifting to meth 9 amphetamine?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. I don't know the answer to that, but 12 I know that once laws were strengthened 13 regarding cocaine and crack cocaine, we saw drug 14 abusers and drug dealers shift to other drugs.</p> <p>15 Q. Approximately when did that occur?</p> <p>16 A. Probably the late '90s.</p> <p>17 Q. From the late '90s to approximately 18 what time period did you see drug users focus on 19 meth amphetamine as opposed to crack and 20 cocaine?</p> <p>21 A. In the early part of my time in the 22 Summit County Prosecutor's Office, when meth 23 amphetamine was strong, probably up till about 24 six, seven years ago.</p> <p>25 Q. So around 2011?</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Do you have any understanding as to 2 which individuals or groups are the source of 3 the heroin that you've seen in Summit County?</p> <p>4 MS. HERMIZ: Objection to form.</p> <p>5 A. The individuals who are the sources 6 of heroin in Summit County are the dealers, and 7 we prosecute them when they are charged.</p> <p>8 Q. How has the use of heroin in Summit 9 County changed over time?</p> <p>10 A. What we've seen in our -- in our 11 office is that, historically, we were told that 12 heroin was a more significant problem. It was 13 replaced by cocaine, crack cocaine, that was 14 cheaper to produce. That was then replaced by 15 meth amphetamines, which, in Summit County, were 16 manufactured by individuals in their homes, 17 their garages. And heroin then became cheaper 18 and was replacement to the meth amphetamines.</p> <p>19 Q. When did you see -- or approximately 20 what time period did you see heroin users shift 21 to crack and cocaine, as you just described?</p> <p>22 A. I did not see that. When I began 23 prosecuting, cocaine was the main drug.</p> <p>24 Q. And that was in 2001?</p> <p>25 A. No. That would have been 1986,</p>	<p style="text-align: right;">Page 37</p> <p>1 A. 2011, 2012.</p> <p>2 Q. And is around 2011 to 2012 the time 3 period when you began to see drug users who had 4 previously used meth amphetamine opting instead 5 to begin using heroin?</p> <p>6 MS. HERMIZ: Objection to form.</p> <p>7 A. I do not know if the drug users who 8 were using meth amphetamines are the same drug 9 users who were using heroin.</p> <p>10 Q. But around 2011 to 2012 you saw a 11 decrease in meth amphetamine and an increase in 12 heroin; is that correct?</p> <p>13 A. It may be around that time.</p> <p>14 Q. And you mentioned a reason for that 15 trend from meth amphetamine to heroin is because 16 of the price of heroin, correct?</p> <p>17 A. That's what law enforcement and our 18 cases showed.</p> <p>19 Q. What's your understanding about how 20 much heroin cost at that time between 2011 to 21 2012?</p> <p>22 A. I have no idea on the cost.</p> <p>23 Q. Do you have any understanding of how 24 the price of heroin on the streets has changed 25 over time?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. No, I do not.</p> <p>2 Q. Is it your understanding that the</p> <p>3 heroin of today is more expensive, less</p> <p>4 expensive or as expensive as the heroin of the</p> <p>5 1970s?</p> <p>6 A. I do not know.</p> <p>7 Q. What's your understanding about how</p> <p>8 the purity level of heroin on the streets has</p> <p>9 evolved over time?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. I do not know the purity of heroin.</p> <p>12 - - - - -</p> <p>13 (Thereupon, Gessner Deposition</p> <p>14 Exhibit 4, Announcement Titled "The</p> <p>15 Heroin Epidemic" Beginning Bates</p> <p>16 Number SUMMIT_001468949, was marked</p> <p>17 for purposes of identification.)</p> <p>18 - - - - -</p> <p>19 Q. I'm marking this as Exhibit 4. It's</p> <p>20 Bates SUMMIT 1468949. Mr. Gessner, this appears</p> <p>21 to be an announcement from Sherri Bevan Walsh,</p> <p>22 Summit County Prosecutor, titled "The Heroin</p> <p>23 Epidemic," correct?</p> <p>24 A. Could I finish reading it, please?</p> <p>25 Okay. Do you have a question?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Is there any way you could refresh</p> <p>2 your recollection as to what the source of these</p> <p>3 data statistics are?</p> <p>4 MS. HERMIZ: Objection to form.</p> <p>5 A. Could you repeat your question?</p> <p>6 Q. So the report itself does not</p> <p>7 contain citations to any research or data,</p> <p>8 correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Do you know what resources or data</p> <p>11 back up the statistics --</p> <p>12 MS. HERMIZ: Objection to form.</p> <p>13 Q. -- in Exhibit 4?</p> <p>14 A. Well, if you look to the fourth</p> <p>15 paragraph, "According to the National Institute</p> <p>16 on Drug Abuse," that would be one of the</p> <p>17 sources.</p> <p>18 Q. Okay. So while we're on that</p> <p>19 paragraph, do you see the statement, "The heroin</p> <p>20 on the streets today is 80 to 90 percent purer</p> <p>21 and much cheaper than the heroin of the 1970s"?</p> <p>22 A. Yes, I do see that.</p> <p>23 Q. And having seen that, is this</p> <p>24 something that you've reviewed previously?</p> <p>25 A. I am sure at some point I reviewed</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. This appears to be an announcement</p> <p>2 from Sherri Bevin Walsh, Summit County</p> <p>3 Prosecutor, titled "The Heroin Epidemic,"</p> <p>4 correct?</p> <p>5 A. I believe it was a newsletter</p> <p>6 article or an article sent to law enforcement</p> <p>7 for publication.</p> <p>8 Q. Were you involved in the preparation</p> <p>9 of this document?</p> <p>10 A. I may have been.</p> <p>11 Q. Do you know on what date this</p> <p>12 document was created or disseminated?</p> <p>13 A. No, I don't.</p> <p>14 Q. Who else would have been involved in</p> <p>15 the creation of this document?</p> <p>16 A. Prosecutor Walsh, others in the</p> <p>17 office who may have done research for her. I do</p> <p>18 not know.</p> <p>19 Q. You took the time to read the</p> <p>20 document and you noted, I'm sure, that it</p> <p>21 contains some statistics?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know the source of those</p> <p>24 statistics?</p> <p>25 A. Offhand, no.</p>	<p style="text-align: right;">Page 41</p> <p>1 this.</p> <p>2 Q. And having seen that, does that</p> <p>3 refresh your recollection as to the purity level</p> <p>4 of heroin and the cost of heroin?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. The paragraph says that heroin is 80</p> <p>7 to 90 percent purer and much cheaper than the</p> <p>8 heroin of the '70s, and I would not disagree</p> <p>9 with that.</p> <p>10 Q. You believe that to be accurate?</p> <p>11 MS. HERMIZ: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Is distribution of heroin a crime?</p> <p>14 A. Yes.</p> <p>15 Q. And is possession of heroin a crime?</p> <p>16 A. In Summit County, yes.</p> <p>17 Q. And are those crimes prosecuted by</p> <p>18 your office?</p> <p>19 A. Yes.</p> <p>20 Q. I think you mentioned earlier that</p> <p>21 your office focuses on prosecuting heroin drug</p> <p>22 dealers, correct?</p> <p>23 MS. HERMIZ: Objection to form.</p> <p>24 A. Any drug dealers. We prosecute all</p> <p>25 drug dealers.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Do you play any role in</p> <p>2 investigating international drug traffickers?</p> <p>3 A. We do not investigate.</p> <p>4 Q. Do you understand that international</p> <p>5 drug traffickers are the primary source of the</p> <p>6 heroin in Summit County?</p> <p>7 A. The primary source of heroin in</p> <p>8 Summit County are the dealers in Summit County,</p> <p>9 so there -- they may receive it from outside the</p> <p>10 county, but we focus on the county.</p> <p>11 Q. You focus on the dealers within the</p> <p>12 county?</p> <p>13 A. Yes. The transaction -- the</p> <p>14 possession and use and transactions of those in</p> <p>15 Summit County is where we're going to focus.</p> <p>16 Q. But you do understand that the</p> <p>17 heroin that those dealers receive is coming from</p> <p>18 outside the United States?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. Much of it is inside the United</p> <p>21 States before it gets to Akron, also.</p> <p>22 Q. You do understand that the heroin</p> <p>23 that is manufactured and later sold in Summit</p> <p>24 County is primarily manufactured outside the</p> <p>25 United States? Is that your understanding?</p>	<p style="text-align: right;">Page 44</p> <p>1 opiates -- or opioids." So I retract my prior</p> <p>2 statement that it does not talk about opioids,</p> <p>3 prescribed opioids. It does talk about those.</p> <p>4 And that would be the next -- the last</p> <p>5 paragraph, the last two sentences.</p> <p>6 Q. And the announcement begins with the</p> <p>7 words "Ohio has a problem. An epidemic. It's</p> <p>8 one which impacts every neighborhood, every</p> <p>9 person. Heroin." Did I read that correctly?</p> <p>10 A. Yes, you did.</p> <p>11 Q. And do you know who was -- who this</p> <p>12 announcement was sent to?</p> <p>13 A. I think, as I said earlier, it was</p> <p>14 either sent to law enforcement, journals, or in</p> <p>15 a newsletter. It appears something that would</p> <p>16 be in our monthly newsletter.</p> <p>17 Q. And according to Exhibit 4, how have</p> <p>18 the number of indictments for possession of</p> <p>19 heroin in Summit County changed between 2010 and</p> <p>20 2015?</p> <p>21 A. The fifth paragraph says, "The</p> <p>22 number of indictments for possession of heroin</p> <p>23 in Summit County has more than quadrupled since</p> <p>24 2010. In 2014, over 500 defendants were</p> <p>25 prosecuted for possession of heroin, as opposed</p>
<p style="text-align: right;">Page 43</p> <p>1 MS. HERMIZ: Same objection.</p> <p>2 A. We do not focus on where the heroin</p> <p>3 was manufactured. We focus on where it was</p> <p>4 transacted and where it was used and possessed.</p> <p>5 Q. And I'm not asking about where your</p> <p>6 office focuses in terms of who it prosecutes.</p> <p>7 I'm just asking for your understanding, based on</p> <p>8 your years as a prosecutor and prosecuting drug</p> <p>9 crimes, is it your understanding that the</p> <p>10 primary source of the heroin is Mexico or some</p> <p>11 country other than the United States?</p> <p>12 A. Yes.</p> <p>13 Q. Exhibit 4 refers again to "the</p> <p>14 heroin epidemic," correct, the title of the</p> <p>15 document itself?</p> <p>16 A. Yes.</p> <p>17 Q. And in this document there's no</p> <p>18 mention of prescription opioid drugs, correct?</p> <p>19 A. I do not believe there is.</p> <p>20 Q. The document doesn't refer to the</p> <p>21 opioid epidemic, right?</p> <p>22 A. Yes, it does. Well, not epidemic.</p> <p>23 But it has "Naloxone is administered through the</p> <p>24 nose and reverses the effects of an opiate</p> <p>25 overdose caused by heroin or pain-prescribed</p>	<p style="text-align: right;">Page 45</p> <p>1 to 157 in 2010."</p> <p>2 Q. Moving down to the next paragraph,</p> <p>3 it states that heroin trafficking prosecutions</p> <p>4 also increased from 46 to 152 between 2010 and</p> <p>5 2014, correct?</p> <p>6 A. That's what it states.</p> <p>7 Q. And based on your experience in the</p> <p>8 office, are these statistics accurate?</p> <p>9 A. Yes.</p> <p>10 Q. What is the basis for these</p> <p>11 statistics, the ones about the number of</p> <p>12 indictments and the number of prosecutions?</p> <p>13 A. Those would be the cases we handled.</p> <p>14 Q. And how are those cases tracked?</p> <p>15 A. We at the time had what's called --</p> <p>16 COPS was our case management system, so to track</p> <p>17 those, you would have to go through and --</p> <p>18 basically, go case by case through them and hand</p> <p>19 count them.</p> <p>20 Q. When you say "go case by case</p> <p>21 through them," what is "them"?</p> <p>22 A. Okay. If you look at the</p> <p>23 indictments by the Grand Jury, and you count</p> <p>24 those, all of the cases indicted, we would have</p> <p>25 had, in 2010, 46 for trafficking in heroin, in</p>



<p style="text-align: right;">Page 46</p> <p>1 2014 you would have counted 152 of those.</p> <p>2 Q. Would you have had to count each and</p> <p>3 every single case -- or, excuse me. Would you</p> <p>4 have had to review each and every single</p> <p>5 indictment that your office had in that</p> <p>6 particular year to determine which ones were</p> <p>7 related to heroin?</p> <p>8 A. There may have been a code in the</p> <p>9 COPS system to look at that, but I know we had a</p> <p>10 lot of difficulty. COPS was an antiquated</p> <p>11 system, it began back in the 1990s, and it was</p> <p>12 just replaced, actually, earlier this year by</p> <p>13 the Matrix system. And COPS to the point was</p> <p>14 when you would pull it up on your computer,</p> <p>15 instead of being on the full screen, it was</p> <p>16 almost a postage stamp in the corner, because</p> <p>17 each operating system of Windows that came out</p> <p>18 made it more likely to crash, and the ability to</p> <p>19 search on it was reduced each year it went on.</p> <p>20 When the COPS people came in to make a proposal</p> <p>21 for a new case management system, they were</p> <p>22 shocked that our system was still working.</p> <p>23 Q. How did that affect your office's</p> <p>24 ability to understand criminal trends?</p> <p>25 MS. HERMIZ: Objection to form.</p>	<p style="text-align: right;">Page 48</p> <p>1 to see what number we have.</p> <p>2 Q. And the caseloads that are reported</p> <p>3 in the budget documents, are those all</p> <p>4 indictments or are they only cases that have</p> <p>5 been resolved through plea or verdict?</p> <p>6 A. Those are new indictments.</p> <p>7 Q. What's the name of the new database</p> <p>8 that replaced the COPS system?</p> <p>9 A. Matrix.</p> <p>10 Q. And when was Matrix put into effect?</p> <p>11 A. I believe it became functional in</p> <p>12 March of this year.</p> <p>13 Q. How does the Matrix system differ</p> <p>14 from the COPS system with respect to trying to</p> <p>15 identify what portion of your cases relate to</p> <p>16 specific types of crimes?</p> <p>17 A. A search would have to be made</p> <p>18 under -- you could search under a particular</p> <p>19 code section of the Revised Code and it would be</p> <p>20 able to pull up those cases.</p> <p>21 Q. And when it pulls up all the cases</p> <p>22 related to that code section, does it pull up</p> <p>23 all cases that have been indicted?</p> <p>24 A. It would probably depend on what</p> <p>25 your parameters were for your search.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. We don't understand criminal trends</p> <p>2 by -- by statistics. When you're working in a</p> <p>3 courtroom, you understand the criminal trends by</p> <p>4 what lands on your desk.</p> <p>5 Q. So your office wasn't routinely</p> <p>6 analyzing the proportion of crimes that made up</p> <p>7 your total docket?</p> <p>8 MS. HERMIZ: Objection to form.</p> <p>9 A. As to some statistical analysis, no.</p> <p>10 Q. To determine that in 2014 over 500</p> <p>11 defendants were prosecuted for possession of</p> <p>12 heroin, how many cases would you need to review?</p> <p>13 In other words, what is the total number of</p> <p>14 cases that were prosecuted by your office in</p> <p>15 2014?</p> <p>16 A. 2014, you would probably be</p> <p>17 somewhere around 3,700 and some. You could look</p> <p>18 on the -- the budget report for each year, and</p> <p>19 it would have the amount on there for you.</p> <p>20 Q. Does the database, the COPS system,</p> <p>21 allow you to understand the total amount of</p> <p>22 cases relative to an office on a particular</p> <p>23 year?</p> <p>24 A. No. We look at the number issued by</p> <p>25 the clerk of courts and -- for that latest case,</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. What other parameters can you enter</p> <p>2 apart from the code section?</p> <p>3 A. You could look at cases for that</p> <p>4 year. You could look at cases resolved that</p> <p>5 year. You could look at cases pending that</p> <p>6 year.</p> <p>7 Q. Does the Matrix system contain</p> <p>8 information about cases that have been declined</p> <p>9 for prosecution?</p> <p>10 A. If it was a case that came to our</p> <p>11 office, so it went through either our direct</p> <p>12 indictment program from a city prosecutor's</p> <p>13 office to our office, where it obtained a case</p> <p>14 number from the clerk of courts and we declined</p> <p>15 it at that point, then it would show up in</p> <p>16 there. If it did not receive a case number from</p> <p>17 the clerk of courts, it would not show up in</p> <p>18 Matrix.</p> <p>19 Q. And what determines if it receives a</p> <p>20 case number from the clerk of courts?</p> <p>21 A. Well, if the clerk of courts issues</p> <p>22 the case number. So if we review a case from a</p> <p>23 city prosecutor and we look and say that we're</p> <p>24 not accepting that case, that would not have --</p> <p>25 go to a clerk and it would go back to the</p>

<p style="text-align: right;">Page 50</p> <p>1 municipal prosecutor.</p> <p>2 Q. And are records kept of instances</p> <p>3 when that has occurred?</p> <p>4 A. I don't know if the city</p> <p>5 prosecutor's office keeps those records or if we</p> <p>6 do.</p> <p>7 Q. Who would know?</p> <p>8 A. Well, the city prosecutors would</p> <p>9 know that, and I would be able to check in with</p> <p>10 my office to see.</p> <p>11 Q. Does anyone else in your office</p> <p>12 know?</p> <p>13 A. That's what I would have to check to</p> <p>14 see.</p> <p>15 Q. Okay. How far back does the data in</p> <p>16 the Matrix system go? In other words, does it</p> <p>17 include cases prior to March 2018?</p> <p>18 A. It has some cases back there, but</p> <p>19 it's not the -- it's not what comes in now. So</p> <p>20 when -- I believe there was a transfer of the</p> <p>21 documents into there, it was more of a dumping,</p> <p>22 and we don't have the access or ability on all</p> <p>23 of those. Basically we have what was in the</p> <p>24 COPS system, and not even all of that detail in</p> <p>25 there. So historically we don't have the</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Prosecuting them as involuntary</p> <p>2 manslaughter, I believe it was around that time.</p> <p>3 Q. And until then, you had not</p> <p>4 prosecuted those cases as involuntary</p> <p>5 manslaughter, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. What led to this change? What led</p> <p>8 to the decision to begin prosecuting heroin</p> <p>9 suppliers with involuntary manslaughter when</p> <p>10 there was an overdose death?</p> <p>11 A. The number of deaths, the number of</p> <p>12 overdoses, law enforcement coming to us saying</p> <p>13 something needed to be done beyond what -- what</p> <p>14 was -- that our system wasn't working as it was.</p> <p>15 Again, with the influx of the drugs, the influx</p> <p>16 of whatever was being added to these drugs, it</p> <p>17 wasn't something that was manageable with our</p> <p>18 system as it was. At the time we looked to</p> <p>19 potential charges. There were discussions of</p> <p>20 murder charges or discussions of manslaughter.</p> <p>21 There were discussions of adding new laws to the</p> <p>22 books in Ohio to deal with this. But it was</p> <p>23 something where time was of the essence, so we</p> <p>24 looked and found that the manslaughter fit and</p> <p>25 we started charging that.</p>
<p style="text-align: right;">Page 51</p> <p>1 ability to go back and do things on there that</p> <p>2 we can do going forward.</p> <p>3 Q. Do you still also maintain access to</p> <p>4 the COPS database?</p> <p>5 A. For what it's worth, yes.</p> <p>6 Q. When did Summit County first begin</p> <p>7 prosecuting suppliers of heroin with involuntary</p> <p>8 manslaughter for overdose deaths?</p> <p>9 MS. HERMIZ: Objection to form.</p> <p>10 A. Could you repeat that?</p> <p>11 Q. When did your office first begin</p> <p>12 prosecuting suppliers of heroin with involuntary</p> <p>13 manslaughter for overdose deaths?</p> <p>14 MS. HERMIZ: Same objection.</p> <p>15 A. I believe the first case we</p> <p>16 prosecuted was -- it's in the document you gave</p> <p>17 me there, Danielle Hoover, seventh paragraph</p> <p>18 down. 2013, "Danielle Hoover was prosecuted and</p> <p>19 convicted for involuntary manslaughter for the</p> <p>20 2009 death of Richard Davis."</p> <p>21 Q. And the document states that "One of</p> <p>22 the first cases in Summit County was in 2013."</p> <p>23 Is it your recollection that 2013 was the first</p> <p>24 year that your office began prosecuting these</p> <p>25 types of cases?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. You said that there was an influx of</p> <p>2 drugs and whatever was being added to these</p> <p>3 drugs. Can you specify which drugs in</p> <p>4 particular attributed to this change in charging</p> <p>5 policy?</p> <p>6 A. I think when we saw the fentanyl,</p> <p>7 and, then more clearly, when we saw the</p> <p>8 carfentanil added, you saw spikes in the death</p> <p>9 rate.</p> <p>10 Q. Let's talk about fentanyl for a</p> <p>11 moment. First of all, what is fentanyl?</p> <p>12 A. Fentanyl is a synthetic opioid. It</p> <p>13 is used as a painkiller and it's prescribed by</p> <p>14 doctors.</p> <p>15 Q. And what's your understanding about</p> <p>16 how potent fentanyl is relative to heroin or</p> <p>17 other drugs?</p> <p>18 A. The first I ever knew of fentanyl</p> <p>19 was when some of our investigators in the county</p> <p>20 were talking about an individual who had a time</p> <p>21 release fentanyl patch and they decided it</p> <p>22 wasn't working quick enough so they started</p> <p>23 chewing on it and died as a result of that.</p> <p>24 Q. Exhibit 4, in front of you -- I</p> <p>25 believe it's Exhibit 4 -- the very bottom of</p>



<p style="text-align: right;">Page 54</p> <p>1 that page, the last paragraph refers to  2 fentanyl, and it states that fentanyl is 80 to  3 100 times more potent than heroin.  4 Do you see that?  5 A. Yes, I see that.  6 Q. Is that also your understanding?  7 A. I don't know the exact 80 to 100,  8 but yes, it's more potent.  9 Q. And what is carfentanil?  10 A. What we've been told is it's an  11 elephant tranquilizer. Akron Police came to us  12 the first time with carfentanil and advised us  13 they had gone to the Akron Zoo to see if they  14 could get a sample of it to take to Ohio BCI Lab  15 to get a standard, and they were told that Akron  16 Zoo did not have any animals large enough to  17 permit them to have carfentanil. So they went  18 to the Cleveland Zoo. They obtained carfentanil  19 there. They were given it by someone in a  20 Hazmat suit, and they were also given an  21 antidote with it based on the seriousness of it.  22 Q. Is it your understanding that  23 carfentanil is even more potent than fentanyl?  24 A. Yes.  25 Q. And you've mentioned both fentanyl</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Are you also aware of fentanyl or  2 carfentanil being mixed with cocaine?  3 A. On some occasions, but much less.  4 Q. What are the risks of mixing  5 carfentanil with heroin?  6 A. From what we've --  7 MS. HERMIZ: Objection to form.  8 A. I don't know all of the risks, but I  9 can tell you what we've seen is death.  10 Q. Based on your experience, are drug  11 users always aware that the heroin or the  12 cocaine that they're ingesting is mixed with  13 fentanyl or carfentanil?  14 MS. HERMIZ: Objection to form.  15 A. There are times they are. We don't  16 know if they all are.  17 Q. When do you recall first seeing  18 fentanyl or carfentanil in Summit County?  19 A. I don't recall, but I would -- it  20 was not far into when we started charging with  21 the manslaughter.  22 Q. So based on your recollection, it  23 was around 2013?  24 A. 2013, 2014 or 2015.  25 - - - - -</p>
<p style="text-align: right;">Page 55</p> <p>1 and carfentanil have been problems in Summit  2 County, correct?  3 A. We have seen those along with the  4 other drugs they're used with, yes.  5 Q. Are you aware of instances in which  6 a drug dealer has mixed heroin with fentanyl or  7 carfentanil?  8 A. Yes.  9 Q. How many such instances are you  10 aware of?  11 MS. HERMIZ: Objection to form.  12 A. Too many.  13 Q. Can you estimate for us?  14 A. No, but I can tell you that it was  15 to the point where I believe on one weekend in  16 Akron there were maybe 200 overdoses. I know it  17 was to the point where the medical examiner had  18 to have a refrigerated trailer brought up  19 because the morgue wasn't big enough to -- or  20 large enough equipped to handle the deaths  21 relating to it.  22 Q. And it's your understanding those  23 deaths were related to issues where heroin was  24 mixed with fentanyl or carfentanil?  25 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 (Thereupon, Gessner Deposition  2 Exhibit 5, Media Release Titled  3 "Heroin Users Face Potentially Fatal  4 Ingredient" dated January 25, 2006,  5 Beginning Bates Number  6 SUMMIT_000350711, was marked for  7 purposes of identification.)  8 - - - - -  9 Q. I've just handed you Exhibit 5,  10 SUMMIT 350711. This is a media release dated  11 January 25th, 2006, titled "Heroin Users Face  12 Potentially Fatal Ingredient." It's issued by  13 Sheriff Drew Alexander, the County of Summit.  14 Have you seen Exhibit 5 before?  15 A. No.  16 Q. In Exhibit 5 Summit County Sheriff  17 Alexander announces, "That information and  18 intelligence obtained from Summit County Drug  19 Unit indicates that heroin mixed with a  20 synthesized variant of the analgesic fentanyl  21 has been found in northeastern Ohio."  22 And if you go down two paragraphs,  23 Exhibit 5 further states, "During the 1990s,  24 fentanyl was found to be the cause of numerous  25 deaths among heroin users throughout the eastern</p>

<p style="text-align: right;">Page 58</p> <p>1 United States."</p> <p>2 MS. HERMIZ: Objection to form.</p> <p>3 Q. Did I read that correctly?</p> <p>4 A. Yes, you read what the document</p> <p>5 says.</p> <p>6 Q. Now, you said you hadn't seen this</p> <p>7 document previously, so this media release was</p> <p>8 not something you reviewed while you were at the</p> <p>9 Summit County Prosecutor's Office?</p> <p>10 A. No, it was not. This is the</p> <p>11 sheriff's department. They're separate from us.</p> <p>12 Q. I understand.</p> <p>13 You certainly collaborate with the</p> <p>14 sheriff's department and other law enforcement</p> <p>15 agencies regarding criminal activities in your</p> <p>16 jurisdiction?</p> <p>17 A. Criminal activities, not media</p> <p>18 releases.</p> <p>19 Q. And this wasn't simply a release to</p> <p>20 your office about criminal trends; in fact, this</p> <p>21 was a media release intended for public</p> <p>22 dissemination, correct?</p> <p>23 A. I do not know that. This is the</p> <p>24 first I've seen it.</p> <p>25 Q. Is this the sort of thing that you</p>	<p style="text-align: right;">Page 60</p> <p>1 doubt that fentanyl was present in northeastern</p> <p>2 Ohio, correct?</p> <p>3 A. No, I don't.</p> <p>4 Q. During your time at the Summit</p> <p>5 County Prosecutor's Office, how many instances</p> <p>6 of cases involving fentanyl or carfentanil have</p> <p>7 you encountered?</p> <p>8 A. Numerous.</p> <p>9 Q. How many?</p> <p>10 A. I can't quantify it.</p> <p>11 Q. Is it more than ten?</p> <p>12 A. Yes.</p> <p>13 Q. Is it more than 50?</p> <p>14 A. May have been.</p> <p>15 Q. Is it more than a hundred?</p> <p>16 A. I don't know.</p> <p>17 Q. How would you go about determining</p> <p>18 the answer to that question?</p> <p>19 A. That, I don't know, because you</p> <p>20 would have to have a time frame. You would have</p> <p>21 to have whether the case -- whether there were</p> <p>22 charges relating to that or not. If fentanyl or</p> <p>23 carfentanil was involved but there were no</p> <p>24 charges relating to it, that would not show up</p> <p>25 on any of our searches. So I don't know if I</p>
<p style="text-align: right;">Page 59</p> <p>1 wish that you had seen at the time in 2006?</p> <p>2 MS. HERMIZ: Objection to form.</p> <p>3 Q. I'll rephrase.</p> <p>4 Would knowing this information back</p> <p>5 in 2006 have been useful to you in your role</p> <p>6 as -- at the Summit County Prosecutor's Office?</p> <p>7 A. May have; may not have been. I</p> <p>8 mean, it doesn't really talk about Summit</p> <p>9 County, other than the last paragraph. So,</p> <p>10 again, if it's one case in March of 2005 where</p> <p>11 someone died as an overdose of fentanyl abuse,</p> <p>12 that, of course, would have been something that</p> <p>13 would have been something we would pay attention</p> <p>14 to. Other than that, you have to realize, as a</p> <p>15 prosecutor in the courtroom with the caseloads</p> <p>16 we have, again, this is not going to stand out</p> <p>17 to us.</p> <p>18 Q. You don't have any reason to dispute</p> <p>19 that information and intelligence obtained from</p> <p>20 the Summit County Drug Unit indicated the</p> <p>21 presence of fentanyl in Summit County as early</p> <p>22 as 2006, do you?</p> <p>23 A. The document doesn't say Summit</p> <p>24 County. It says northeast Ohio.</p> <p>25 Q. Okay. You don't have any reason to</p>	<p style="text-align: right;">Page 61</p> <p>1 can get you that answer.</p> <p>2 Q. You could use the COPS or the Matrix</p> <p>3 databases to look up charge codes related to</p> <p>4 fentanyl or carfentanil crimes, correct?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. Fentanyl and carfentanil, I don't</p> <p>7 know if we can search on that or if it's just</p> <p>8 the criminal charge for the possession or</p> <p>9 trafficking.</p> <p>10 Q. Who would know what search</p> <p>11 parameters are possible using those databases?</p> <p>12 A. I'm sure IT would be able to check</p> <p>13 that out for you.</p> <p>14 Q. Who specifically in IT?</p> <p>15 A. Brett Lawrence is our IT person. He</p> <p>16 may or may not be the person. Otherwise, the</p> <p>17 county IT.</p> <p>18 Q. Are you aware of instances in which</p> <p>19 a drug dealer has disguised fentanyl as</p> <p>20 prescription opioids?</p> <p>21 A. I do not know.</p> <p>22 Q. Are you aware of any instances of</p> <p>23 counterfeit pills containing fentanyl being sold</p> <p>24 in Summit County?</p> <p>25 A. I believe I've heard that.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Who have you heard that from?</p> <p>2 A. Just law enforcement in general.</p> <p>3 Q. How did you come to learn about</p> <p>4 that?</p> <p>5 A. It may have been at Summit County</p> <p>6 Drug Unit meetings. It may have been just</p> <p>7 speaking with officers. I don't know.</p> <p>8 Q. How often do you attend meetings</p> <p>9 with the Summit County Drug Unit?</p> <p>10 A. I used to attend monthly. Maybe a</p> <p>11 few times a year.</p> <p>12 Q. During what period of time do you</p> <p>13 recall learning that counterfeit pills</p> <p>14 containing fentanyl were being sold in Summit</p> <p>15 County?</p> <p>16 A. I do not know.</p> <p>17 Q. Can you estimate?</p> <p>18 A. No.</p> <p>19 Q. Was it during the time period in</p> <p>20 which you were a supervisor at the Summit County</p> <p>21 Prosecutor's Office?</p> <p>22 A. Yes. That would be between then and</p> <p>23 now, yes.</p> <p>24 Q. And when did you first become a</p> <p>25 supervisor?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. But you cannot recall how many</p> <p>2 conversations you may have had about that topic?</p> <p>3 A. Yes.</p> <p>4 Q. And you cannot recall the source of</p> <p>5 that information?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what kinds of pills were</p> <p>8 being counterfeited?</p> <p>9 A. No.</p> <p>10 Q. Is it your understanding that a drug</p> <p>11 user would think they were buying a pill and, in</p> <p>12 fact, they were getting fentanyl?</p> <p>13 A. I don't know what the drug users</p> <p>14 were thinking.</p> <p>15 Q. Law enforcement never shared a</p> <p>16 theory with you on that issue?</p> <p>17 A. Again, what the drug user was</p> <p>18 thinking, no, I don't know that.</p> <p>19 Q. Is it your understanding that the</p> <p>20 counterfeit pills containing fentanyl sold in</p> <p>21 Summit County contributed to the overdoses in</p> <p>22 Summit County?</p> <p>23 MS. HERMIZ: Objection to form.</p> <p>24 A. They were part of the epidemic that</p> <p>25 we have.</p>
<p style="text-align: right;">Page 63</p> <p>1 A. 2003, 2004.</p> <p>2 Q. How many conversations or meetings</p> <p>3 did you attend in which the issue of counterfeit</p> <p>4 pills containing fentanyl being sold in Summit</p> <p>5 County was discussed?</p> <p>6 MS. HERMIZ: Objection to form.</p> <p>7 A. Again, I -- I don't recall if it was</p> <p>8 at a meeting.</p> <p>9 Q. But you're certain that you heard</p> <p>10 the information, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Which officers do you speak with on</p> <p>13 a regular basis about drug issues in Summit</p> <p>14 County?</p> <p>15 MS. HERMIZ: Objection to form.</p> <p>16 A. I speak with any officer in the</p> <p>17 county who would call and ask questions. I</p> <p>18 speak with officers who come in to bring files.</p> <p>19 I speak with officers who come in to testify. I</p> <p>20 speak with officers who come in to Grand Jury.</p> <p>21 Q. So sometime between 2003 or '04 and</p> <p>22 the present day, you became aware that</p> <p>23 counterfeit pills containing fentanyl were being</p> <p>24 sold in Summit County; is that correct?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. And as being part of the epidemic,</p> <p>2 is it your understanding they contributed to the</p> <p>3 overdoses?</p> <p>4 A. They may have.</p> <p>5 Q. Who, in your experience, sells</p> <p>6 counterfeit pills?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 A. Criminals.</p> <p>9 Q. So you can't go into Walgreens and</p> <p>10 purchase them, right?</p> <p>11 A. I hope not.</p> <p>12 Q. It's illicit drug dealers who are</p> <p>13 selling them on the street, correct?</p> <p>14 A. Unfortunately, I don't think it's</p> <p>15 just on the street.</p> <p>16 Q. Where else do you think this occurs?</p> <p>17 A. In schools.</p> <p>18 Q. Okay. How about other than schools</p> <p>19 and the street; where else?</p> <p>20 A. I don't know.</p> <p>21 Q. And what is the basis for your</p> <p>22 belief that counterfeit pills are also being</p> <p>23 sold in schools?</p> <p>24 A. General information while being in</p> <p>25 the prosecutor's office.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. Can you be more specific?</p> <p>2 A. No.</p> <p>3 Q. Is it related to cases that you've</p> <p>4 actually handled or seen?</p> <p>5 A. It may have been cases I've seen,</p> <p>6 not cases I've handled.</p> <p>7 Q. How many such cases are you aware</p> <p>8 of?</p> <p>9 A. I do not know. I am a supervisor</p> <p>10 over the juvenile division, but those are --</p> <p>11 more information they would have.</p> <p>12 Q. It's not something that you monitor</p> <p>13 as a supervisor?</p> <p>14 A. No.</p> <p>15 Q. Do you consider part of your role as</p> <p>16 a prosecutor to prevent crime?</p> <p>17 A. Yes.</p> <p>18 Q. Would you agree that maintaining an</p> <p>19 awareness of criminal trends in your</p> <p>20 jurisdiction better equips you to prevent crime</p> <p>21 as a prosecutor in that jurisdiction?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. Yes.</p> <p>24 Q. How difficult is it for law</p> <p>25 enforcement to detect counterfeit pills at the</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes.</p> <p>2 Q. Are you aware that the vast majority</p> <p>3 of fentanyl reports by law enforcement result</p> <p>4 from illegally produced and trafficked fentanyl,</p> <p>5 not diverted pharmaceutical fentanyl?</p> <p>6 MS. HERMIZ: Objection to form.</p> <p>7 A. I am not aware of that information.</p> <p>8 - - - - -</p> <p>9 (Thereupon, Gessner Deposition</p> <p>10 Exhibit 6, Ohio Department of Health</p> <p>11 News Release Titled "Illicit</p> <p>12 Fentanyl Continues to Fuel Increase</p> <p>13 in Drug Overdose Deaths in Ohio"</p> <p>14 dated August 25, 2016, Beginning</p> <p>15 Bates Number AKRON_000271913, was</p> <p>16 marked for purposes of</p> <p>17 identification.)</p> <p>18 - - - - -</p> <p>19 Q. I'm going to hand you what's been</p> <p>20 marked for identification as Exhibit 6. It's</p> <p>21 AKRON 271913. I'm going to focus your attention</p> <p>22 to the first three paragraphs of this document.</p> <p>23 This is an Ohio Department of Health</p> <p>24 news release titled "Illicit Fentanyl Continues</p> <p>25 to Fuel Increase in Drug Overdose Deaths in</p>
<p style="text-align: right;">Page 67</p> <p>1 scene of an overdose?</p> <p>2 MS. HERMIZ: Objection to form.</p> <p>3 A. You would have to talk to law</p> <p>4 enforcement on that.</p> <p>5 Q. Has anyone that you speak to -- any</p> <p>6 law enforcement agents that you've spoken to</p> <p>7 expressed to you anything about the detection of</p> <p>8 counterfeit pills at the scene of an overdose?</p> <p>9 A. I'm sure over the years officers</p> <p>10 have discussed counterfeit pills with me.</p> <p>11 Normally our pills and that are all sent to BCI,</p> <p>12 to the Ohio Crime Lab, to have them examined and</p> <p>13 have them make that determination.</p> <p>14 Q. What does BCI stand for?</p> <p>15 A. Ohio Bureau of Criminal</p> <p>16 Investigation.</p> <p>17 Q. In your experience, what's the</p> <p>18 primary source of fentanyl in Summit County?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. Fentanyl is either -- the primary</p> <p>21 source would be doctors or pharmacies or drug</p> <p>22 dealers.</p> <p>23 Q. You mentioned doctors or pharmacies.</p> <p>24 Is that because fentanyl is also a prescription</p> <p>25 medicine?</p>	<p style="text-align: right;">Page 69</p> <p>1 Ohio." It was published August 25th of 2016,</p> <p>2 correct?</p> <p>3 A. Hold on. I'm still reading the</p> <p>4 third paragraph.</p> <p>5 Q. Okay.</p> <p>6 A. Okay. Go ahead.</p> <p>7 Q. This is an August 25th, 2016</p> <p>8 article, correct?</p> <p>9 A. That's what it says, yes.</p> <p>10 Q. If you look at the fourth paragraph,</p> <p>11 which begins with the word "Fentanyl," the</p> <p>12 second sentence states, "The vast majority of</p> <p>13 fentanyl reports by law enforcement in drug</p> <p>14 seizures result from illegally produced and</p> <p>15 trafficked fentanyl, not diverted prescription</p> <p>16 fentanyl."</p> <p>17 First, did I read that sentence</p> <p>18 correctly?</p> <p>19 A. Yes, you did.</p> <p>20 Q. Okay. And do you have any reason to</p> <p>21 disagree with that statement?</p> <p>22 A. No.</p> <p>23 Q. So it's fair to say that illicit</p> <p>24 fentanyl contributed to the drug overdose deaths</p> <p>25 in Ohio?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Legal and illegal drugs, yes.</p> <p>2 Q. And the vast majority of fentanyl</p> <p>3 reports by law enforcement in drug seizures were</p> <p>4 from that illegally produced fentanyl --</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 Q. -- correct?</p> <p>7 A. That's what the Ohio Department of</p> <p>8 Health said on August 25th of 2016.</p> <p>9 Q. Is the sale of illicit fentanyl and</p> <p>10 carfentanil a crime in Summit County?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And has your office prosecuted the</p> <p>13 sale or distribution of illicit fentanyl?</p> <p>14 A. If those cases have been brought to</p> <p>15 us, yes.</p> <p>16 Q. How about carfentanil?</p> <p>17 A. If those cases have been brought to</p> <p>18 us, yes.</p> <p>19 Q. Now, you said "if." Is that because</p> <p>20 you're uncertain as to whether your office has</p> <p>21 ever prosecuted a distribution case involving</p> <p>22 fentanyl or carfentanil?</p> <p>23 A. As to specific cases, yes. I know</p> <p>24 we have handled those cases. We have handled</p> <p>25 the cases with deaths relating to those and</p>	<p style="text-align: right;">Page 72</p> <p>1 fentanyl cases, is there a way to determine</p> <p>2 that?</p> <p>3 A. Sure. You can go through those</p> <p>4 4,000 cases and look through each one.</p> <p>5 Q. And what specifically -- what</p> <p>6 specific documents or information would you have</p> <p>7 to review in order to separate fentanyl or other</p> <p>8 drugs from the larger pool of drug cases?</p> <p>9 A. The indictment.</p> <p>10 Q. Okay.</p> <p>11 A. So if you go through each</p> <p>12 indictment, it will say "trafficking with</p> <p>13 drugs," and name the drug following that.</p> <p>14 Q. So you have to look through each and</p> <p>15 every indictment to figure out which drugs were</p> <p>16 at issue --</p> <p>17 A. Depending on the drug it is. If</p> <p>18 it's something that's not within something that</p> <p>19 we've found the need to set up a search for,</p> <p>20 again, due to volume in the past, yes.</p> <p>21 Q. For some of your drug cases have you</p> <p>22 set up a special indicator for them because the</p> <p>23 volume of those cases is far greater than the</p> <p>24 volume of other drug cases?</p> <p>25 A. I believe with Matrix they did set</p>
<p style="text-align: right;">Page 71</p> <p>1 we've prosecuted those.</p> <p>2 Q. Do you know how many cases your</p> <p>3 office has prosecuted since 2006 that involved</p> <p>4 possession or distribution of fentanyl?</p> <p>5 A. Off the top of my head, I cannot</p> <p>6 give you that number.</p> <p>7 Q. Can you give us an estimate?</p> <p>8 A. When we look at these -- these</p> <p>9 cases, we don't break them down into specific --</p> <p>10 again, as -- for me to just give me an estimate,</p> <p>11 I can tell you drug-related cases, drug-related</p> <p>12 deaths, we can do that. Again, when you're</p> <p>13 looking at this year, in excess of 4,000 cases,</p> <p>14 new cases this year, I can't go by and point out</p> <p>15 each type by the number.</p> <p>16 Q. So you might be able to tell us how</p> <p>17 many of your total caseload are drug cases,</p> <p>18 right?</p> <p>19 A. Um-hum.</p> <p>20 Q. But you can't tell us, of those drug</p> <p>21 cases, how many are fentanyl cases?</p> <p>22 A. Right. I can tell you they're</p> <p>23 there, but not how many.</p> <p>24 Q. Is there a way -- if we needed to</p> <p>25 determine how many of the drug cases were</p>	<p style="text-align: right;">Page 73</p> <p>1 it up for heroin.</p> <p>2 Q. Okay. Other than heroin, do any</p> <p>3 other drugs have a special indicator that would</p> <p>4 allow you to quickly cull them from the other</p> <p>5 drug cases?</p> <p>6 A. Cocaine may. I'm not sure.</p> <p>7 Q. What about marijuana?</p> <p>8 A. Well, there is a -- I mean, a charge</p> <p>9 of possession of marijuana, so we can just pull</p> <p>10 that charge.</p> <p>11 Q. Okay. What about prescription</p> <p>12 opioids?</p> <p>13 A. I -- I think you would have to go</p> <p>14 through the cases.</p> <p>15 Q. To your knowledge, has anyone</p> <p>16 attempted to do that in your office?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. So sitting here today, you can't</p> <p>19 tell us how many fentanyl drug cases your office</p> <p>20 prosecuted between 2006 and the present day?</p> <p>21 A. No.</p> <p>22 Q. And sitting here, you can't tell us</p> <p>23 how many carfentanil cases your office</p> <p>24 prosecuted from 2006 until the present day?</p> <p>25 A. No. I can tell you how many deaths</p>



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1 relating to these crimes we've done, but I can't  
 2 tell you those specific cases.  
 3 Q. Okay. And is the same true for  
 4 prescription opioids? In other words, sitting  
 5 here today, you can't tell us how many  
 6 prosecutions for possession or sale of  
 7 prescription opioids your office has prosecuted  
 8 from 2006 until the current day?  
 9 A. No, I cannot single those out for  
 10 you.  
 11 Q. Okay. Now, you mentioned you can  
 12 tell us about the number of deaths tied to  
 13 specific drugs; is that right?  
 14 A. Um-hum. Well, to the -- to the --  
 15 again, the manslaughters we've had relating to  
 16 the heroin, the fentanyl, carfentanil and that,  
 17 we, I believe, have had since 2013, I believe  
 18 we've prosecuted somewhere in the neighborhood  
 19 of 55 of those cases.  
 20 Q. What cases specifically are you  
 21 referring to?  
 22 A. Involuntary manslaughter, most of  
 23 the time with corruption of another with drugs.  
 24 Q. And what types of drugs were  
 25 involved in those approximately 55 cases?

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1 A. Heroin, fentanyl, carfentanil,  
 2 cocaine.  
 3 Q. Any other drugs involved in those  
 4 approximately 55 cases involving involuntary  
 5 manslaughter?  
 6 A. There may have been.  
 7 Q. Were prescription opioids involved  
 8 in any of the approximately 55 cases your office  
 9 prosecuted involving involuntary manslaughter  
 10 charges?  
 11 A. There was a presence of what could  
 12 have been prescription opioids in some of those.  
 13 Again, I don't have specifics on that for you.  
 14 Q. You said "in some of those."  
 15 Approximately how many cases could have involved  
 16 prescription opioids?  
 17 A. I'd have to look at the autopsy  
 18 reports on those to get you that number.  
 19 Q. And within the autopsy reports, are  
 20 you referring specifically to the toxicology  
 21 screen?  
 22 A. Yes.  
 23 Q. And is the reason you would have to  
 24 look at the autopsy reports because in none of  
 25 those cases was the individual prosecuted for an

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1 actual crime relevant to the prescription  
 2 opioid?  
 3 MS. HERMIZ: Objection to form.  
 4 A. I would have to check that.  
 5 Q. Okay. And are those autopsy reports  
 6 maintained in your case files for these  
 7 involuntary manslaughter cases?  
 8 A. They should be.  
 9 Q. Now, you said that in some of the  
 10 cases prescription opioids could have been  
 11 involved.  
 12 A. Um-hum.  
 13 Q. What makes you say "could have  
 14 been"?  
 15 A. Well, if you look at the toxicology  
 16 report, they will list what was found, and what  
 17 we have to look at, because we have to prove our  
 18 case beyond a reasonable doubt as to the cause  
 19 of death, did that particular drug cause the  
 20 death or was it just in the system or not.  
 21 Q. Are you aware of any cases that your  
 22 office has prosecuted where an individual is  
 23 being prosecuted for involuntary manslaughter  
 24 related to an overdose death in which the victim  
 25 ingested only prescription opioids and no other

Page 77

1 drugs?  
 2 A. Not that I'm aware of.  
 3 Q. I think you stated earlier you're  
 4 not aware whether your office prosecuted a  
 5 synthetic opioid known as U-47700?  
 6 A. Yes, I do not recall that specific  
 7 number.  
 8 Q. Do you recall learning about, from  
 9 media reports or elsewhere, that the governor of  
 10 Ohio had authorized the State Board of Pharmacy  
 11 to take emergency action regarding that  
 12 particular synthetic opioid?  
 13 A. Not until you just told me.  
 14 Q. I'd like to ask you some more  
 15 questions about the involuntary manslaughter  
 16 cases your office has prosecuted.  
 17 You stated that you began  
 18 prosecuting those cases in or around 2013,  
 19 correct?  
 20 A. Yes.  
 21 Q. And how many such cases has your  
 22 office indicted?  
 23 A. I believe I said 55.  
 24 Q. Of those 55 indictments, how many  
 25 actually have gone to trial?



<p style="text-align: right;">Page 78</p> <p>1 A. Actual trials, I believe three.</p> <p>2 Q. And what was the result of those</p> <p>3 three trials?</p> <p>4 A. Guilties, and the others were pleas.</p> <p>5 I think one or two -- one may have been</p> <p>6 dismissed for federal prosecution. One was</p> <p>7 dismissed -- I'm sorry. I can't think of the</p> <p>8 reason.</p> <p>9 Q. How many guilty pleas of the 55?</p> <p>10 A. 55 minus 3 minus 2 should be about</p> <p>11 50. Well, I'm sorry. There may be some</p> <p>12 pending. So absent the ones pending. But it's</p> <p>13 into the 40s I know.</p> <p>14 Q. For guilty pleas?</p> <p>15 A. Yes.</p> <p>16 Q. So you've had approximately 40 or</p> <p>17 more guilty pleas in cases involving involuntary</p> <p>18 manslaughter?</p> <p>19 A. Yes.</p> <p>20 Q. And how are those cases staffed?</p> <p>21 MS. HERMIZ: Objection to form.</p> <p>22 A. Explain. I don't understand.</p> <p>23 Q. How many prosecutors are assigned to</p> <p>24 work on a particular case involving involuntary</p> <p>25 manslaughter?</p>	<p style="text-align: right;">Page 80</p> <p>1 have to do it.</p> <p>2 Q. Okay. So have all of the</p> <p>3 prosecutors in the criminal division handled a</p> <p>4 case involving involuntary manslaughter charges?</p> <p>5 A. No.</p> <p>6 Q. How many have?</p> <p>7 A. Probably the majority.</p> <p>8 Q. Okay. And how many total</p> <p>9 prosecutors do you have?</p> <p>10 A. We have in the criminal division 35,</p> <p>11 I believe.</p> <p>12 Q. So approximately how many of those</p> <p>13 35 prosecutors have handled --</p> <p>14 A. I would think 20.</p> <p>15 Q. -- cases?</p> <p>16 Do you recall earlier this year</p> <p>17 giving a presentation to the Indiana Prosecuting</p> <p>18 Attorneys Council?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And during that presentation did you</p> <p>21 discuss your office's practice of prosecuting</p> <p>22 heroin suppliers in cases where there are</p> <p>23 overdose deaths?</p> <p>24 A. Yes.</p> <p>25 Q. Did you prepare a PowerPoint</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Our particular assignment in the</p> <p>2 office is each prosecutor handles their own</p> <p>3 cases. If there's a case involving a death, we</p> <p>4 like to have two prosecutors on the case, so</p> <p>5 those being a death, there would be two</p> <p>6 prosecutors on it.</p> <p>7 Q. Which prosecutors have worked on the</p> <p>8 involuntary manslaughter cases?</p> <p>9 A. It would depend on -- any prosecutor</p> <p>10 could work on them. It would depend on where</p> <p>11 it's assigned. Each courtroom -- we have ten</p> <p>12 courtrooms. Each courtroom has two full-time</p> <p>13 prosecutors assigned to it, and every two</p> <p>14 courtrooms has a supervisor, so it would be</p> <p>15 either the two courtroom prosecutors or the two</p> <p>16 courtroom prosecutors with their supervisor on</p> <p>17 these cases.</p> <p>18 Q. So you don't have prosecutors that</p> <p>19 specialize in these cases and only these cases?</p> <p>20 A. We'd love to if we had the resources</p> <p>21 for it.</p> <p>22 Q. Is it fair to say that your</p> <p>23 prosecutors act more as generalists, handling a</p> <p>24 variety of different types of cases?</p> <p>25 A. Based on our budget, that's how we</p>	<p style="text-align: right;">Page 81</p> <p>1 presentation for that speaking engagement?</p> <p>2 A. Yes. It's the one you have in front</p> <p>3 of you.</p> <p>4 Q. I'm going to hand you a copy of it,</p> <p>5 and I'm only going to ask you questions about</p> <p>6 specific slides. So I'll mark it for the record</p> <p>7 as Exhibit 7. You can take a look.</p> <p>8 - - - - -</p> <p>9 (Thereupon, Gessner Deposition</p> <p>10 Exhibit 7, "Opiate Overdose</p> <p>11 Investigations &amp; Prosecutions"</p> <p>12 PowerPoint Presentation Slides dated</p> <p>13 June 20, 2018, was marked for</p> <p>14 purposes of identification.)</p> <p>15 - - - - -</p> <p>16 Q. So I've handed you just a few slides</p> <p>17 from the PowerPoint presentation for the "Opiate</p> <p>18 Overdose Investigations &amp; Prosecutions"</p> <p>19 presentation that you delivered on June 20th,</p> <p>20 2018; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. During that presentation did you</p> <p>23 discuss some of the criticism that your office</p> <p>24 has encountered because of its decision to begin</p> <p>25 charging involuntary manslaughter in overdose</p>

<p style="text-align: right;">Page 82</p> <p>1 deaths?</p> <p>2 A. From defense attorneys, yes.</p> <p>3 Q. Okay. So I want to turn your</p> <p>4 attention to that second page of Exhibit 7.</p> <p>5 It's the page just prior to the one you're</p> <p>6 looking at, this one (indicating).</p> <p>7 A. Okay.</p> <p>8 Q. And in your presentation it looks</p> <p>9 like you cited to an article that was written by</p> <p>10 a former heroin addict that criticizes the</p> <p>11 practice; is that right?</p> <p>12 MS. HERMIZ: Objection to form.</p> <p>13 A. This article criticized individuals</p> <p>14 being charged with murder. It did not criticize</p> <p>15 the practice we have of charging with</p> <p>16 involuntary manslaughter.</p> <p>17 Q. And what is the difference?</p> <p>18 A. Murder in Ohio is a special felony</p> <p>19 punishable by 15 years to life in prison.</p> <p>20 Involuntary manslaughter is a first degree</p> <p>21 felony punishable by anywhere from three, four,</p> <p>22 five, six, seven, eight, nine, 10 or 11 years in</p> <p>23 prison.</p> <p>24 Q. Okay. In this article it's noted --</p> <p>25 did you read the article before you referred to</p>	<p style="text-align: right;">Page 84</p> <p>1 A. And those who help them break the</p> <p>2 law also.</p> <p>3 Q. Why is that important?</p> <p>4 A. Well, if you can get to the source,</p> <p>5 you're more likely to stop the problem.</p> <p>6 Q. You also mentioned that you're aware</p> <p>7 of some criticism of this policy coming from</p> <p>8 defense attorneys, correct?</p> <p>9 A. That's what you asked me in your</p> <p>10 question.</p> <p>11 Q. So let's turn to the next page.</p> <p>12 This next page of your presentation relays some</p> <p>13 criticisms from a defense attorney?</p> <p>14 A. And that was actually interesting</p> <p>15 criticism.</p> <p>16 Q. Why was it interesting?</p> <p>17 A. Because what the attorney said is --</p> <p>18 I mean, these are two attorneys who have</p> <p>19 represented individuals. They have made</p> <p>20 comments about there's -- there's proximate</p> <p>21 cause and that doesn't match up, and these</p> <p>22 specific attorneys went in and counseled their</p> <p>23 clients to plead guilty to the charges they said</p> <p>24 in the paper they didn't think they could prove.</p> <p>25 Q. Okay. So, ultimately, they pled</p>
<p style="text-align: right;">Page 83</p> <p>1 it in your presentation?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Okay. I'm going to read you a</p> <p>4 portion of the article. I'm just going to ask</p> <p>5 you if you agree with that or not. "It's likely</p> <p>6 that these laws even make the crisis worse by</p> <p>7 unfairly targeting people suffering from</p> <p>8 addiction, diverting attention toward</p> <p>9 self-replenishing supply chain and away from</p> <p>10 harm reduction or recovery and scaring users</p> <p>11 from reporting overdoses while they are able to</p> <p>12 be reversed. Worse, these laws fail to account</p> <p>13 for the addiction mentality, which drives users</p> <p>14 to seek the most potent high possible despite</p> <p>15 known risks."</p> <p>16 Do you agree with that criticism?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. I'm a prosecutor. We feel that</p> <p>20 individuals who use drugs, illegal drugs, who</p> <p>21 sell illegal drugs, are people who society needs</p> <p>22 to be protected from.</p> <p>23 Q. And you believe, as a prosecutor,</p> <p>24 that individuals who break the law deserve to be</p> <p>25 held responsible?</p>	<p style="text-align: right;">Page 85</p> <p>1 guilty to the charges at issue?</p> <p>2 A. Yes.</p> <p>3 Q. But what was the argument they made</p> <p>4 about involuntary manslaughter charges in</p> <p>5 general?</p> <p>6 A. Well, I think what you -- you have</p> <p>7 to put in the proper context first. These are</p> <p>8 attorneys who, regardless of what we charge</p> <p>9 their clients with, whether it's a drug case or</p> <p>10 not, are going to make criticisms of the</p> <p>11 charges. So my -- my opinion is they saw an</p> <p>12 opportunity to have their name in print.</p> <p>13 Q. Okay. Fair enough.</p> <p>14 Do you believe that the dealers, the</p> <p>15 suppliers, the criminals who supply the heroin</p> <p>16 in overdose cases, are the proximate cause of</p> <p>17 the overdose?</p> <p>18 MS. HERMIZ: Objection to form.</p> <p>19 A. If we have no drugs, we have no</p> <p>20 problems. I guess you could say that in a</p> <p>21 perfect world. So everyone has a part in this.</p> <p>22 And, again, if it's someone, where did they get</p> <p>23 their addiction from? Do we go back there and</p> <p>24 look? Is it someone who's supplying them?</p> <p>25 Again, there are all these different things that</p>

<p style="text-align: right;">Page 86</p> <p>1 we look at, but the law says to us as  2 prosecutors, here are the charges you can charge  3 with; so if we can meet those elements, we're  4 going to charge them.  5 Q. To answer my question, do you  6 believe that the supplier of the heroin in an  7 overdose case is the proximate cause of that  8 person's death?  9 MS. HERMIZ: Objection to form.  10 A. They're a cause.  11 Q. Okay. What percentage of the  12 responsibility for that death would you  13 attribute to the person who supplied the  14 individual with heroin?  15 MS. HERMIZ: Objection to form.  16 A. As a prosecutor, if I can file a  17 charge on someone, I guess I can charge multiple  18 people with one hundred percent, so I don't look  19 at those things and that's not something where  20 we've looked at to -- we, again, look at the law  21 and can we prove that law was violated, not what  22 percentage of the law did they break.  23 Q. Okay. Would you also consider the  24 individual who used or ingested the drug that  25 ultimately led to the overdose death to have</p>	<p style="text-align: right;">Page 88</p> <p>1 manslaughter related to an overdose death, those  2 are not easy cases, right?  3 MS. HERMIZ: Objection to form.  4 A. No cases are easy.  5 Q. And those, in particular, are not  6 easy cases?  7 MS. HERMIZ: Same objection.  8 A. None of our cases are easy.  9 Q. So do you agree with me that those  10 cases are not easy?  11 A. I'd agree with you that all cases  12 are not easy.  13 Q. And one of the reasons those cases  14 are not easy is because you have to prove that  15 causal connection you just talked about, right?  16 A. We have to prove each and every  17 element. One does not outweigh any other. A  18 jury can go through and a judge is going to  19 advise them on the law and says if the  20 prosecutor fails to prove any one of these, then  21 it's a not guilty. So the fact that the crime  22 occurred in Summit County is as important as  23 this was an illegal drug.  24 Q. Would you agree with me that another  25 reason those cases are not easy is because you</p>
<p style="text-align: right;">Page 87</p> <p>1 committed a crime?  2 A. Had they lived, yes.  3 Q. Then do they also in some sense play  4 a role or are they also a factor in causing  5 death?  6 A. Factor, yes.  7 Q. Is it difficult in these types of  8 cases to prove causal connection?  9 MS. HERMIZ: Objection to form.  10 A. In what manner, causal connection of  11 death?  12 Q. Is it difficult in these cases to  13 prove that the supplier of the drugs should be  14 held responsible for causing the overdose death?  15 MS. HERMIZ: Objection to form.  16 A. If we have charged a supplier, we  17 have an obligation to show the link between  18 their drug they did and the death. That's why  19 we have the medical examiner that comes in with  20 that toxicology report to say these drugs. We  21 then -- then look and see -- law enforcement  22 investigates to say those specific drugs came  23 from this person.  24 Q. Okay. Would you agree with me that  25 prosecuting individuals for involuntary</p>	<p style="text-align: right;">Page 89</p> <p>1 have to prove legal culpability of the supplier?  2 MS. HERMIZ: Objection to form.  3 A. That does not make it any more  4 difficult than any other case.  5 Q. Is it true that you highlighted both  6 the causal connection and the legal culpability  7 issues as challenges when you talked at the  8 Indiana Prosecuting Attorneys Council meeting?  9 A. Yes. I was talking about their new  10 law and what they would have to do differently  11 than they had been doing and what we do.  12 Q. And during that presentation, you  13 identified both of those issues as challenges  14 that you have seen in the cases involving  15 involuntary manslaughter?  16 A. Yes.  17 Q. Does your office charge involuntary  18 manslaughter in the case of every overdose  19 death?  20 A. Where there's sufficient evidence,  21 yes.  22 Q. And how do you make the  23 determination?  24 A. Initially, what we did is our  25 supervisors -- we have a supervisors meeting</p>

<p style="text-align: right;">Page 90</p> <p>1 every week, usually Thursday, at 2 p.m., and  2 initially what we did is we had -- it started  3 with Akron Police, actually in the beginning,  4 coming to us with these cases. There were two  5 officers, Detective Schmidt and Detective  6 Harvey. They would come meet with us and talk  7 about these cases.  8 We made -- we sat and we basically  9 roundtabled their cases, and determined which  10 one at the time was going to be the first one to  11 be charged. We made that call. Again, every  12 supervisors meeting then would have Detective  13 Harvey and Detective Schmidt coming up. We  14 weren't able to work on other items then. The  15 sheriff's department then said, Wait. Can we  16 join in? Can we come up on ours? We had some  17 other jurisdictions come in and meet with us on  18 their deaths.  19 So it was then decided well into  20 this, after several charges, and I believe  21 several convictions, that instead of meeting  22 with all the supervisors, that the detectives  23 would meet with two of our supervisors, John  24 Baumoel and Brian LoPrinzi, and then they would  25 present the full case to us at a later time, the</p>	<p style="text-align: right;">Page 92</p> <p>1 present at those meetings?  2 A. And just clarifying, I'm talking  3 about the supervisors' meetings in general. Is  4 that what you're talking about?  5 Q. Yes.  6 A. Okay.  7 On occasion she is at those  8 meetings.  9 Q. And are agendas prepared for those  10 meetings?  11 A. No.  12 Q. Do you take notes during those  13 meetings?  14 A. No.  15 Q. Does anyone else from your office  16 take notes during those meetings?  17 A. I think recently Angela  18 Walls-Alexander takes notes on them, sends just  19 a brief summary.  20 Q. Is she with your office?  21 A. Yes.  22 Q. What is her title?  23 A. She's an assistant county  24 prosecutor. She is not a supervisor, but in a  25 role where -- I believe earlier this year she</p>
<p style="text-align: right;">Page 91</p> <p>1 prosecutors would, rather than law enforcement.  2 Q. What is the title of those two  3 individuals in your office you just referred to?  4 A. Assistant county prosecutors.  5 Q. Who else attended those roundtable  6 supervisors' meetings from your office?  7 A. All of the criminal supervisors,  8 Margaret Scott at the time -- she's not in the  9 office now -- John Baumoel, Brian LoPrinzi, Greg  10 Peacock, Jenny Shuki, Terry Burnside. That  11 should be the list. And myself.  12 Q. And you mentioned other law  13 enforcement officers would come to those  14 meetings as well to present?  15 A. Yes.  16 Q. Where did those meetings take place?  17 A. In the conference room on the 6th  18 floor in the Summit County Safety Building.  19 Q. You mentioned they were on a weekly  20 basis. When did they first begin?  21 A. Our supervisors' meetings, we  22 probably started those about 2000 -- 2010 I  23 think we started having formal supervisors'  24 meetings.  25 Q. Was the county prosecutor herself</p>	<p style="text-align: right;">Page 93</p> <p>1 started coming to our supervisors meetings.  2 Q. When she sends the summaries of  3 those roundtable meetings, how does she do so?  4 A. E-mail. However, since she's been  5 doing that, that postdates these cases going  6 to -- coming to all of us. And if you look at  7 the next document you have, that's John and  8 Brian's form they have. So this is not a form  9 we had when we would meet and when these would  10 be at supervisors meetings.  11 Q. So you're referring to the last page  12 of the exhibit titled "Prosecutors," and  13 included on that page is the death-related --  14 excuse me, the drug-related death prosecutor's  15 worksheet, correct?  16 A. Yes.  17 Q. And who is it that completes these  18 worksheets?  19 A. That's an internal form kept by the  20 prosecutors that are reviewing those, so in this  21 case it most likely would be John Baumoel or  22 Brian LoPrinzi.  23 Q. Who fills out the form?  24 A. I don't know.  25 Q. Where does the information come</p>



<p style="text-align: right;">Page 94</p> <p>1 from?</p> <p>2 A. These, either John or Brian would</p> <p>3 fill this out, or they would have the</p> <p>4 investigating officer fill it out, so I would</p> <p>5 assume the information comes from the</p> <p>6 investigating officer.</p> <p>7 Q. Where are these completed forms</p> <p>8 maintained in your office?</p> <p>9 MS. HERMIZ: Objection to form.</p> <p>10 A. I do not know if they are in the --</p> <p>11 I would assume they're in the case file for any</p> <p>12 case that's charged.</p> <p>13 Q. What about the prosecutor's</p> <p>14 worksheets for cases that are ultimately</p> <p>15 declined by your office; how are those</p> <p>16 worksheets maintained?</p> <p>17 A. Usually when they come to us on</p> <p>18 these cases, they're -- most of them are</p> <p>19 prosecuted. I don't know if they're declined --</p> <p>20 now, some of them they decline on the</p> <p>21 manslaughter charge and charge with the</p> <p>22 corrupting still, so they would still be in that</p> <p>23 case file I'm sure, or a trafficking charge if</p> <p>24 not the corrupting charge.</p> <p>25 Q. You mentioned originally decisions</p>	<p style="text-align: right;">Page 96</p> <p>1 John and Brian or John or Brian.</p> <p>2 Q. When you say make the call, do you</p> <p>3 mean make a recommendation or make the decision?</p> <p>4 A. Make the decision.</p> <p>5 Q. And were they required to obtain</p> <p>6 approval before filing involuntary manslaughter</p> <p>7 charges?</p> <p>8 A. No. They were the approval.</p> <p>9 Q. Okay. So you did not review, and,</p> <p>10 to your knowledge, the county prosecutor herself</p> <p>11 did not review those decisions before they were</p> <p>12 indicted?</p> <p>13 A. No.</p> <p>14 Q. Based on your involvement in the</p> <p>15 process, what factors are considered in</p> <p>16 screening potential cases for the involuntary</p> <p>17 manslaughter charges?</p> <p>18 A. Do we have the evidence to convict.</p> <p>19 Q. What else?</p> <p>20 A. That's -- that's our decision.</p> <p>21 Q. Do you consider whether the</p> <p>22 prospective defendant is an addict himself?</p> <p>23 MS. HERMIZ: Objection to form.</p> <p>24 A. Could you repeat that?</p> <p>25 Q. In deciding whether to charge</p>
<p style="text-align: right;">Page 95</p> <p>1 about whether to file the involuntary</p> <p>2 manslaughter charges were made during those</p> <p>3 roundtable meetings?</p> <p>4 A. Um-hum.</p> <p>5 Q. And that it ultimately changed so</p> <p>6 that those two individuals, John -- what was his</p> <p>7 last name?</p> <p>8 A. Baumoel.</p> <p>9 Q. Baumoel. And Brian LoPrinzi?</p> <p>10 A. B-a-u-m-o-e-l.</p> <p>11 Q. Thank you.</p> <p>12 A. LoPrinzi, L-o-P-r-i-n-z-i.</p> <p>13 Q. Those two individuals filled out the</p> <p>14 worksheets, correct?</p> <p>15 A. I don't know if they did or the</p> <p>16 officer did.</p> <p>17 Q. Okay. But they ensured that the</p> <p>18 worksheets were filled out, correct?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. You would have to ask them.</p> <p>21 Q. Okay. When it shifted from the</p> <p>22 roundtable, how did the -- how was the process</p> <p>23 done for determining whether to file involuntary</p> <p>24 manslaughter charges?</p> <p>25 A. John and Brian would make that call,</p>	<p style="text-align: right;">Page 97</p> <p>1 involuntary manslaughter --</p> <p>2 A. Right.</p> <p>3 Q. -- do you consider whether the</p> <p>4 prospective defendant is an addict himself?</p> <p>5 MS. HERMIZ: Same objection.</p> <p>6 A. It's discussed if the defendant is</p> <p>7 an addict.</p> <p>8 Q. Okay. But it doesn't, as you know,</p> <p>9 factor into the decision on whether to charge</p> <p>10 that defendant with involuntary manslaughter?</p> <p>11 A. In a criminal case everything</p> <p>12 factors in.</p> <p>13 Q. Do you believe it's important to</p> <p>14 identify the various culpabilities of</p> <p>15 individuals who are involved in drug overdoses?</p> <p>16 MS. HERMIZ: Objection to form.</p> <p>17 A. We look at the culpability of the</p> <p>18 individuals we're charging.</p> <p>19 Q. And when you consider who to charge,</p> <p>20 do you consider whether a prospective defendant</p> <p>21 was trafficking in drugs for financial reasons</p> <p>22 versus simply sharing a drug with a fellow</p> <p>23 addict? Is that something that your office</p> <p>24 would consider before deciding to charge?</p> <p>25 A. Consider, but it may not affect the</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 outcome, may not affect whether we charge or 2 not. 3 Q. Why not? 4 A. We -- we have charged individuals 5 who were friends who provided the drugs and they 6 were sharing in the drugs, and we've charged 7 those with selling the drugs. Again, it's -- 8 it's all part of the case. You have to look at 9 each case in the totality. You can't just look 10 to any specific thing. Just like I said on our 11 elements, our jury is told if they miss any one 12 of these elements, it's a not guilty. So, 13 again, we're going to consider everything. It 14 may make it more challenging of a crime -- or, I 15 mean, of a trial. It may be something that you 16 think may affect a jury more, but that is, 17 again, something we consider. 18 - - - - - 19 (Thereupon, Gessner Deposition 20 Exhibit 8, Grant Application 21 Beginning Bates Number 22 SUMMIT_000064898, was marked for 23 purposes of identification.) 24 - - - - - 25 Q. I've marked for identification</p>	<p style="text-align: right;">Page 100</p> <p>1 can pass forward through that. And look at page 2 1. The first paragraph, the second sentence 3 from the end -- 4 A. My pages don't have numbers on them. 5 Q. The page that's in your hand right 6 now, that very first page there, yes. 7 A. Okay. 8 Q. At the very bottom it has the Bates 9 number SUMMIT 64899. 10 A. Yes. 11 Q. The first paragraph, second to the 12 last sentence, reads, "The introduction of 13 synthetic opioids like fentanyl and carfentanil 14 has significantly increased the problem," 15 referring to the unfortunate overdose deaths. 16 Do you agree with that statement, even if you 17 were not the one that drafted it? 18 A. Yes. 19 Q. And if you could turn now to page 3. 20 At the top of page 3, the first full sentence at 21 the top of page 3, which is SUMMIT 64901, begins 22 with the words "Charging decisions." 23 A. Um-hum. 24 Q. It states, "Charging decisions will 25 consider the respective culpability of drug</p>
<p style="text-align: right;">Page 99</p> <p>1 Exhibit 8. This is a lengthy document. I'm not 2 going to ask you about all of it. My first 3 question is, were you involved in drafting this 4 grant application? 5 A. Other than identifying the 6 individuals in the office who would work on 7 submitting -- creating and submitting this grant 8 proposal, no, I was not. 9 Q. Okay. So you didn't draft this 10 document? 11 A. No. 12 Q. Who did draft this document? 13 A. I don't know. 14 Q. Who did you assign? 15 A. I believe Kevin Guest and Tom Kroll. 16 Q. What are their titles? 17 A. Assistant county prosecutor. 18 Q. And, to your knowledge, when did 19 those two individuals work on this grant 20 application? 21 A. Several months ago. 22 Q. This year? 23 A. Yes. 24 Q. And I just want to turn your 25 attention -- there's the project abstract. You</p>	<p style="text-align: right;">Page 101</p> <p>1 dealers who prey upon a vulnerable drug addicted 2 populous drug users compared to those 3 individuals who share narcotics with friends. 4 This distinction is important as it allows for a 5 multi-faceted approach to the opioid problem by 6 identifying the various culpabilities of 7 individuals involved in drug overdoses. The 8 Summit County Prosecutor's Office Opiate Unit 9 will identify and separate the criminal 10 population of opiate offenders to ensure that 11 individuals who traffic in opiates for financial 12 reasons are treated differently from opiate 13 addicts who have shared the drug with fellow 14 addicts but were not directly involved in the 15 overdose." 16 Do you agree with that statement, 17 even if you were not the one who drafted it? 18 MS. HERMIZ: Objection to form. 19 A. Well, first of all, this is a 20 document that was to -- seeking a grant to 21 create a unit in our office, and I agree that if 22 we received that grant, that's what our unit was 23 going to do. 24 Q. Okay. So that would have been the 25 intention of your office had you received the</p>



<p style="text-align: right;">Page 102</p> <p>1 grant money to fund two prosecutors who could 2 focus on an opiate -- 3 A. I believe the parameters of the 4 opportunities for that grant needed those 5 different things to be met in order to obtain 6 the grant, yes. 7 Q. Okay. And do you agree that it 8 makes sense to treat differently those 9 individuals who are trafficking in drugs for 10 financial reasons from addicts who share the 11 drugs with fellow addicts but are not directly 12 involved in the overdose? 13 MS. HERMIZ: Objection to form. 14 A. Personally? 15 Q. Yes. 16 A. Not always. 17 Q. Why not? 18 A. There are times individuals provide 19 drugs to people and use their addictions as an 20 excuse. 21 Q. Can you say more about that? 22 A. Ohio has a Good Samaritan law 23 that -- I don't like that either. 24 Q. Okay. First of all, tell us about 25 what the Good Samaritan law is.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I think it's something politicians 2 do to try to address problems without going to 3 the source of the problems, so let's make a 4 friendly law here, but again, we've got to look 5 and see why are all of these people having these 6 addictions, where is all this coming from, and 7 that's where we've got to go. 8 THE VIDEOGRAPHER: Can we go off the 9 record, please? 10 MS. WOODS: Yes. 11 THE VIDEOGRAPHER: Off the record at 12 11:11. 13 (Recess had.) 14 THE VIDEOGRAPHER: We're on the 15 record, 11:28. 16 BY MS. WOODS: 17 Q. Mr. Gessner, does your office have 18 policies and procedures governing charging 19 decisions? 20 A. I believe that's within our policy 21 and procedures manual. 22 Q. Have you produced that manual in 23 this litigation? 24 A. If it's been requested, it's been 25 produced.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. If someone has -- has an overdose 2 and you call to get them help, even though you 3 may have supplied them with the drugs, you get a 4 free pass. 5 Q. And what about that law do you find 6 problematic? 7 A. The connection between supplying the 8 drugs that caused the death and -- and a pass is 9 what I find troubling. 10 Q. Are you familiar with the argument 11 that providing immunity to the suppliers of the 12 drugs increases the chances that they will call 13 law enforcement for help when there is an 14 overdose and potentially save a life? Are you 15 familiar with that argument? 16 A. I've heard that argument, yes. 17 Q. What's your response to that 18 argument? 19 A. If they call for help and get them 20 help, I can't argue with it. 21 Q. In your opinion, has the Good 22 Samaritan law resulted in a decrease in overdose 23 deaths? 24 A. No. I think it just sounded good. 25 Q. What do you mean by that?</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. How long is the manual? 2 A. It's digital. 3 Q. I should first ask, is it electronic 4 -- 5 A. Yes. 6 Q. -- or hard copy? Electronic. 7 And is it available to all the 8 prosecutors in your office? 9 A. Yes. 10 Q. When was that manual last updated? 11 A. It's ongoing, depending on what 12 needs to be addressed in that. 13 Q. Have you produced all prior versions 14 of the manual? 15 MS. HERMIZ: Objection to form. 16 A. I have not produced any -- anything. 17 Our IT person would be the person, I think, that 18 has sent those over. 19 Q. How do you access the manual 20 electronically? Is it on a website, an 21 intranet? 22 A. No. Under office policies. 23 Under -- I believe it's under our O-drive. 24 Q. Is it a public document? 25 A. If it's requested, it would be a</p>

<p style="text-align: right;">Page 106</p> <p>1 public document.</p> <p>2 Q. Unfortunately, I don't believe that</p> <p>3 we've received that manual. Can you summarize</p> <p>4 for me what the manual says in terms of charging</p> <p>5 decisions?</p> <p>6 MS. HERMIZ: Objection to form.</p> <p>7 A. I would need -- need in front of</p> <p>8 me -- other than it primarily -- the most</p> <p>9 significant portion would be our ethical</p> <p>10 obligations in it.</p> <p>11 Q. And what are those ethical</p> <p>12 obligations?</p> <p>13 A. As prosecutors, we're the only</p> <p>14 attorneys in the entire legal system that have</p> <p>15 to do what's right. Prosecutors are the only</p> <p>16 attorneys under law that have to tell the truth.</p> <p>17 So it would be following that. I believe it</p> <p>18 also has, in order to dismiss a case, you need</p> <p>19 to have my signature on the dismissal. If</p> <p>20 you're going to reduce a case to a misdemeanor,</p> <p>21 you need your supervisor's signature on that.</p> <p>22 So, again, they're all tied in the charging and</p> <p>23 resolving of cases, I believe.</p> <p>24 Q. And does it outline policies that</p> <p>25 are to be followed in determining whether to</p>	<p style="text-align: right;">Page 108</p> <p>1 into a diversion program that, I believe, they</p> <p>2 are using in Franklin County, and we have not</p> <p>3 opted to participate in that at this point.</p> <p>4 Q. Why not?</p> <p>5 A. We feel our -- our laws that exist</p> <p>6 are dealing with that and the diversion program</p> <p>7 set in the Revised Code covers what we need.</p> <p>8 Q. And when you refer to a diversion</p> <p>9 program, what are you talking about?</p> <p>10 A. What I'm talking about with the</p> <p>11 diversion program is someone who is potentially</p> <p>12 charged with a crime or charged with a crime,</p> <p>13 having it diverted to where there are no</p> <p>14 criminal charges, that we have a system set up</p> <p>15 with that. That's what I'm speaking of.</p> <p>16 Q. And does your office keep records or</p> <p>17 track the number of cases that are diverted?</p> <p>18 A. Yes.</p> <p>19 Q. Where are those records kept?</p> <p>20 A. Those would actually be kept by the</p> <p>21 Oriana House. Oriana operates our program for</p> <p>22 us.</p> <p>23 Q. What sorts of cases are diverted</p> <p>24 from prosecution?</p> <p>25 A. A lot of shopliftings.</p>
<p style="text-align: right;">Page 107</p> <p>1 file charges in a particular case?</p> <p>2 A. I don't know if that's in there. We</p> <p>3 pretty much follow the National Prosecution</p> <p>4 Standards that the National District Attorneys</p> <p>5 Association has.</p> <p>6 Q. And where are those standards</p> <p>7 memorialized?</p> <p>8 A. The National District Attorneys</p> <p>9 Association, on their website you can pull those</p> <p>10 up. It's the National Prosecution Standards.</p> <p>11 Q. And what factors are considered in</p> <p>12 those standards in determining whether to</p> <p>13 prosecute a case?</p> <p>14 A. Just about everything. I think it</p> <p>15 goes A through, maybe, double X.</p> <p>16 Q. Do you rely on any other policies or</p> <p>17 standards or procedures when deciding whether to</p> <p>18 prosecute a case?</p> <p>19 A. Just our ethical obligations to do</p> <p>20 what's right.</p> <p>21 Q. Are there any specific policies that</p> <p>22 you're aware of about bringing cases that</p> <p>23 involve the diversion of prescription medicine?</p> <p>24 A. No; however, we did just receive a</p> <p>25 request from the Ohio Pharmacy Board to enter</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. What other types of cases?</p> <p>2 A. Minor thefts, individuals who are</p> <p>3 just over the thousand dollar limit on a theft.</p> <p>4 A lot of bad checks or fraudulent checks, those</p> <p>5 are diverted.</p> <p>6 Q. Are drug cases diverted?</p> <p>7 A. No, because we have our -- the</p> <p>8 court -- Summit County Court has their Turning</p> <p>9 Point program. Previously they were diverted in</p> <p>10 the old drug court system. They are now charged</p> <p>11 and handled through the courts.</p> <p>12 Q. So none of Summit County</p> <p>13 Prosecutor's diverted drug cases would be</p> <p>14 diverted to Oriana House?</p> <p>15 A. Oriana House.</p> <p>16 Q. Is that correct?</p> <p>17 MS. HERMIZ: Objection to form.</p> <p>18 A. Well, you have to clarify. There is</p> <p>19 the Summit County Prosecutor's diversion</p> <p>20 program. That program does not have any drug</p> <p>21 cases in it.</p> <p>22 Q. What program does have drug cases</p> <p>23 that are diverted?</p> <p>24 A. If there is any, it would be the</p> <p>25 Summit County Court of Common Pleas Turning</p>

<p style="text-align: right;">Page 110</p> <p>1 Point program.</p> <p>2 Q. So we'll ask you questions about</p> <p>3 that later.</p> <p>4 Going back to the charging</p> <p>5 decisions, we spoke about the process that is</p> <p>6 followed with respect to the involuntary</p> <p>7 manslaughter cases. What process is followed</p> <p>8 with respect to the other cases handled by your</p> <p>9 office?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. Can you rephrase that?</p> <p>12 Q. How does your office decide whether</p> <p>13 to file charges in cases other than those</p> <p>14 involuntary manslaughter cases we already talked</p> <p>15 about?</p> <p>16 A. All right.</p> <p>17 Under Ohio law, we only have</p> <p>18 jurisdiction on felony cases; however, the</p> <p>19 jurisdiction to initiate a felony charge, absent</p> <p>20 a secret indictment by the Grand Jury, is</p> <p>21 maintained by the municipal courts, municipal</p> <p>22 city prosecutors for the county. They are --</p> <p>23 the city prosecutors are not in any way related</p> <p>24 to our county prosecutor's office. We have</p> <p>25 what's called a direct indictment program in</p>	<p style="text-align: right;">Page 112</p> <p>1 process.</p> <p>2 A. Okay.</p> <p>3 Initially, one of our direct</p> <p>4 indictment officers -- there are, I believe,</p> <p>5 seven, five full time, two part time -- they</p> <p>6 will pick up all of the police reports</p> <p>7 associated with that charge, bring them back to</p> <p>8 our office. I believe they start anywhere from</p> <p>9 7 to 8:00 in the morning gathering those</p> <p>10 documents.</p> <p>11 At about 10:30 that morning, they</p> <p>12 will have a meeting with whoever the prosecutor</p> <p>13 is assigned to the Grand Jury presentation a</p> <p>14 week out from that, at which point they'll</p> <p>15 review the documents and determine if it is a</p> <p>16 case to schedule for Grand Jury, which about 98</p> <p>17 percent of them are, or if it's a case that they</p> <p>18 feel would be better resolved back in the</p> <p>19 municipal court, if it's something, again,</p> <p>20 questionable, something that -- for example,</p> <p>21 there are individuals who would steal cars and</p> <p>22 we would find out they were actually renting</p> <p>23 them in return for giving someone drugs. So</p> <p>24 years ago that came up. So we try to weed those</p> <p>25 out and send those back to the city.</p>
<p style="text-align: right;">Page 111</p> <p>1 Summit County that the majority of the county is</p> <p>2 involved in. There are some townships and</p> <p>3 cities in the northern part of the county where</p> <p>4 they do not participate in that program.</p> <p>5 So, typically, under the direct</p> <p>6 indictment program, the municipal prosecutors</p> <p>7 will approve felony charges. Those individuals</p> <p>8 arrested for a felony charge today will be</p> <p>9 reviewed and screened by our office tomorrow and</p> <p>10 presented to the Grand Jury within one week of</p> <p>11 the individual's arrest. So the initial</p> <p>12 charging is something that we have no part of --</p> <p>13 Q. Understood.</p> <p>14 A. -- in those cases.</p> <p>15 If it's outside of the direct</p> <p>16 indictment program, it, again, is the city</p> <p>17 prosecutor's office would handle those or the</p> <p>18 law director for whatever jurisdiction that may</p> <p>19 be. It could go to a preliminary hearing and</p> <p>20 then be bound over to the Grand Jury, to our</p> <p>21 office for review at that point, and for</p> <p>22 presentation to the Grand Jury.</p> <p>23 Q. Okay. For cases that come to you</p> <p>24 through the direct indictment program, please</p> <p>25 explain your office's review and screening</p>	<p style="text-align: right;">Page 113</p> <p>1 So there's -- those individuals,</p> <p>2 along with our direct indictment officers,</p> <p>3 screen them, make sure we have the elements of</p> <p>4 our offenses committed that we believe we can</p> <p>5 prove, and then the matter is sent over to the</p> <p>6 clerk of court's office for a case number and</p> <p>7 scheduled for Grand Jury.</p> <p>8 Q. And you said approximately 98</p> <p>9 percent of the cases that are screened</p> <p>10 ultimately go on to be charged in your office?</p> <p>11 A. Yes. And I could be a few</p> <p>12 percentage points off.</p> <p>13 Q. How does the prosecutor decide which</p> <p>14 particular charges to file?</p> <p>15 A. Based on their experience.</p> <p>16 Q. And what records are kept concerning</p> <p>17 this review and screening process?</p> <p>18 A. Well, it's all, actually,</p> <p>19 computerized now, the system, on Matrix, where</p> <p>20 the prosecutors will actually access Matrix</p> <p>21 right during their screening, put the</p> <p>22 information in there, so the case management</p> <p>23 system would have that information on there.</p> <p>24 Q. And before the advent of Matrix, how</p> <p>25 was this review screening process documented?</p>

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1 A. It was called a green sheet. It was  
2 an 8-and-a-half by 14-inch piece of paper that  
3 was green. That's why they called it a green  
4 sheet. And notes would just be made on it. The  
5 scheduled dates would be on there.  
6 Q. And how were those green sheets  
7 maintained?  
8 A. In each case file. The physical  
9 file would have it.  
10 Q. Are those green sheets available in  
11 electronic form today or are they still hard  
12 copy?  
13 A. I don't know if the clerk of courts  
14 has the green sheets or not. On some cases I  
15 believe they did. So if they took them and  
16 scanned them in, they would be electronically;  
17 otherwise, it's hard copy in the file.  
18 Q. Where are these case files that  
19 contain the green sheets kept?  
20 A. In our office in the Jeter system.  
21 Q. In the what system?  
22 A. Jeter.  
23 Q. What is that?  
24 A. It's a file management system. It  
25 has cranks on it and they move up, space saving.

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1 Q. If you needed to go find a  
2 particular case file, who would you go to to  
3 access it?  
4 A. I would go look myself.  
5 Q. For the case file yourself?  
6 A. Yes.  
7 Q. Is it possible to review these green  
8 sheets without going to each individual hard  
9 copy case file?  
10 A. If you pulled them up  
11 electronically, each individual case, and looked  
12 through the clerk of courts to see if it was  
13 there, that would be the other way, but there's  
14 no system where green sheets are kept by  
15 themselves.  
16 Q. And does your office track in any  
17 other way data related to the number of cases  
18 that have been screened and reviewed and the  
19 types of charges that have been filed?  
20 A. I believe over in Grand Jury there  
21 is a tracking of the number of cases that are --  
22 are brought in, the number of cases that are  
23 indicted. There's a monthly report that goes to  
24 the courts. Actually, not monthly. Each --  
25 each time the Grand Jury reports out, there is a

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1 partial report that is submitted to the court.  
2 And I do not believe those are public records.  
3 Q. Who supports those -- excuse me.  
4 Who submits those reports?  
5 A. Our office does.  
6 Q. Who specifically within your office?  
7 A. I would think the secretaries in the  
8 Grand Jury division.  
9 Q. What are their names?  
10 A. Just got a brand-new one there. I  
11 believe Julie. I do not know her last name.  
12 Q. Okay. Anyone else?  
13 A. No.  
14 Q. Who worked there before Julie?  
15 A. Jennifer Cline, and that was Cline  
16 with a C.  
17 Q. What type of documents do you  
18 receive from law enforcement agencies concerning  
19 potential prosecutions?  
20 MS. HERMIZ: Objection to form.  
21 A. We receive police reports and  
22 reports of investigation.  
23 Q. Do you receive any other documents  
24 from law enforcement agencies?  
25 A. We are supposed to receive criminal

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1 histories. There -- I don't know what other  
2 documents you're asking about.  
3 Q. Apart from police reports and  
4 criminal history of a prospective defendant, do  
5 the law enforcement agencies provide you with  
6 any other materials or documents to assist your  
7 office in determining how to handle a case?  
8 A. Within the case file you may find  
9 records from the crime scene, you might find lab  
10 reports, you might find medical reports. That's  
11 all encompassing the report from the police  
12 department. The report of the investigation  
13 usually has everything in there.  
14 Q. And are each of the materials you  
15 just described contained -- or maintained within  
16 your office's case file for that particular  
17 case?  
18 A. Yes.  
19 Q. In what circumstances would your  
20 office prepare a prosecution memo?  
21 MS. HERMIZ: Objection to form.  
22 Q. First of all, do you know what I'm  
23 referring to when I say "prosecution memo"?  
24 A. No. Explain that to me.  
25 Q. Okay. In what circumstances would



<p style="text-align: right;">Page 118</p> <p>1 your office prepare a memo about the case and 2 its evidence and what charges should be filed? 3 A. We don't normally prepare a memo. 4 Q. Has your office prepared memos 5 regarding the prosecution of particular cases? 6 Has it ever done so? 7 A. It may have been done. It may be 8 done infrequently, but it's not anything 9 required or anything that's normally done. 10 Q. Have you yourself ever drafted a 11 memo for others to learn about a case you were 12 handling and its evidence? 13 A. Yes. And at times I've done -- and 14 I wouldn't call it a memo. I may have sent an 15 e-mail to -- we have -- in our computer system 16 we have an address system set up called Z Trial. 17 If you're going to go into trial on a case, you 18 normally send out -- and that normally goes to 19 the prosecutor, myself and the supervisors in 20 the criminal division -- a maybe two or 21 three-sentence summary of your case, any 22 strengths or weaknesses, whether there's any 23 attempts to resolve it, again, if it's set for 24 trial, and that's just sent out as a heads up of 25 I'm going to be in trial.</p>	<p style="text-align: right;">Page 120</p> <p>1 facts of their case, the prosecutor handling it, 2 so they really -- that is not a value to them at 3 any point. If I look at it, generally I'm going 4 to look at that to see if there are any 5 problems. If I receive it from a prosecutor, if 6 there are any problems that I think maybe they 7 missed or should be addressed. And once I've 8 gone through that, I'm going to delete that from 9 my system, again, if there's no need for me to 10 respond to it. 11 What we had is several years ago our 12 system kept slowing down. The county's 13 resources are not the greatest. And when you 14 have 4,000 cases in a year, and even though 15 4,000 don't go to trial, those that do go to 16 trial, or are likely to go to trial and you 17 start sending all these things, we had a system 18 that was greatly slowing down, so we went in and 19 created a retention schedule to allow our system 20 to work much more effectively. 21 Q. Let's talk about that. 22 When did you create that retention 23 schedule? 24 A. Oh, you'd have to look with the 25 Secretary of State to see when that was filed</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. And who does the prosecutor send 2 those summaries two? 3 A. The Z Trial, again, it goes to the 4 county prosecutor, myself and the criminal 5 supervisors. 6 Q. Is that sent like via e-mail? 7 A. Yes. 8 Q. And how are those e-mail summaries 9 of the cases maintained? 10 A. Well, they're maintained based on 11 our retention record and our retention schedule, 12 which typically what we've had -- what was 13 approved by the -- I believe the Secretary of 14 State and the county, was once an e-mail is no 15 longer of value to the person having it, they 16 are to delete it from their system. So once my 17 case is over, that Z Trial would be deleted from 18 the system. 19 Q. And when you say once a case is 20 over, you're referring to the conclusion of -- 21 A. Yes. 22 Q. -- the case, a verdict or any appeal 23 that might transpire? 24 A. No, not necessarily any appeal. 25 More just that Z Trial is again -- they know the</p>	<p style="text-align: right;">Page 121</p> <p>1 first, but it's been quite a few years. 2 Q. And you stated you use e-mail in 3 your job. How long have you used e-mail? 4 I'll rephrase. Have you used e-mail 5 since joining the Summit County Prosecutor's 6 Office in 2001? 7 A. Yes. 8 Q. And how many e-mails a day do you 9 send? 10 MS. HERMIZ: Objection to form. 11 Q. Approximately. 12 A. I may send 20 or 30 e-mails a day. 13 I may receive -- I remember several years ago I 14 broke my wrist and I was off, and the first day 15 off, with trying not to move my wrist, I had 175 16 e-mails that day. 17 Q. Is that a typical day? 18 A. Yes. 19 Q. During your years with the Summit 20 County Prosecutor's Office, have you sent 21 e-mails regarding drug investigations or 22 prosecutions? 23 A. I may have. 24 Q. You're not sure? 25 A. No. I mean, I -- I'm sure I did.</p>

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1 Q. How frequently do you delete your  
2 e-mails?  
3 A. I try to delete them usually once a  
4 week or so. When you see you have 7 or 800  
5 e-mails sitting there, it's nice to get them  
6 down to where they can fit on one page.  
7 Q. Has that always been your practice?  
8 A. Yes. It's an office policy. Again,  
9 you're supposed to delete your e-mails before  
10 they build up.  
11 Q. I understand it was a relatively  
12 recent office policy. My question was, has it  
13 always been your practice to frequently delete  
14 your e-mails?  
15 MS. HERMIZ: Objection to form.  
16 A. First of all, it was not a  
17 relatively recent decision. This has been --  
18 for several years our policy has been you delete  
19 your e-mails. I know -- I've been in my  
20 position since 2013. Prior to that, I'm  
21 thinking 2007, when I became chief of the  
22 criminal division, the policy then was to delete  
23 your e-mails. So this is not a recent change.  
24 Q. And for you, have you always had a  
25 practice of deleting on a weekly basis?

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1 A. I try to.  
2 Q. Do you still have access to the  
3 e-mails you sent back in the early 2000s?  
4 A. No. I would -- when you delete  
5 them, you delete them from your trash bin also  
6 so, again, you're not bogging down the system.  
7 Q. What is the oldest e-mail you still  
8 have access to?  
9 A. I would think I probably -- I  
10 believe I have a couple that might be a year or  
11 so old, because they were to some of our judges,  
12 and I just haven't deleted those.  
13 Q. Would it surprise you to learn that  
14 Summit County only produced 164 documents from  
15 your custodial file?  
16 MS. HERMIZ: Objection to form.  
17 A. No, it wouldn't surprise me.  
18 Q. And that the earliest e-mail is from  
19 December 19th, 2016?  
20 A. I believe you asked e-mails related  
21 to drug-related cases. I don't believe you  
22 asked all of my e-mails.  
23 Q. So it would not surprise you that  
24 the earliest e-mail we received is from  
25 September 19th of 2016?

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1 MS. HERMIZ: Objection to form.  
2 A. That would not surprise me.  
3 Q. Now, you used your work e-mail prior  
4 to that date, right?  
5 A. Yes.  
6 Q. And you e-mailed regarding drug  
7 issues prior to that date, didn't you?  
8 A. Yes.  
9 Q. Do you still have any of those  
10 e-mails?  
11 A. No. As I told you, our e-mails are  
12 based on a retention schedule, and we follow our  
13 retention schedule.  
14 Q. If you needed to find an e-mail you  
15 had sent back in 2014, how would you go about  
16 trying to recover it?  
17 MS. HERMIZ: Objection to form.  
18 A. I don't know. I have not done that.  
19 Q. How many different work e-mail  
20 addresses have you had during your time at  
21 Summit County?  
22 A. I've only had this e-mail address.  
23 Q. Do you use any e-mail address other  
24 than your official e-mail account for business  
25 purposes?

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1 A. No.  
2 Q. Do you have a personal e-mail  
3 address?  
4 A. Yes, I do.  
5 Q. But you've never used that for work?  
6 A. No.  
7 Q. Are there notifications, reports or  
8 other documents that you receive regularly from  
9 others related to your work?  
10 MS. HERMIZ: Objection to form.  
11 A. What type of -- clarify the  
12 notifications.  
13 Q. You said calendar notifications?  
14 A. No. What -- what are you asking?  
15 Q. I'm asking what types of documents  
16 you might receive regularly from individuals you  
17 work with.  
18 A. All types of documents.  
19 Q. Let's walk through them.  
20 So what types of documents?  
21 A. For particularly what? I receive  
22 documents for payroll that -- or people's  
23 vacation leaves that I have to approve. Is that  
24 what you're --  
25 Q. Let's talk about any and all



<p style="text-align: right;">Page 126</p> <p>1 documents you receive related to drugs. We've 2 already mentioned you receive police reports and 3 evidence relating to cases. 4 A. Um-hum. I receive a report I think 5 at the end of each month on the pending 6 death-related drug cases. Megan Bogavich, 7 B-o-g-a-v-i-c-h, is our administrative 8 assistant. She prepares that document. And in 9 it I see the names of the prosecutors who are 10 handling the cases, who their second chair is 11 and what the charges are. 12 Q. When you say "death-related cases," 13 what are you talking about? 14 A. The involuntary manslaughter cases. 15 Q. Okay. What other drug-related 16 documents do you receive from work colleagues? 17 A. In general, none. 18 Q. You mentioned you receive or send 19 e-mail summaries of drug-related cases? 20 A. Of all cases. Any case that is 21 going to go to trial, we send an e-mail out. So 22 it's not something of just drug-related cases. 23 Q. But you do send and receive e-mail 24 summaries related to drug cases, right? 25 A. I have not tried a drug case in</p>	<p style="text-align: right;">Page 128</p> <p>1 regarding drug enforcement? 2 A. I don't receive them. I receive -- 3 internally our communications director will send 4 out press releases on cases we have handled, so 5 I'm copied on those. And, again, most of those 6 are things I'm already familiar with. 7 Q. So you're saying you don't receive 8 any announcements or media releases from law 9 enforcement agents about drugs? 10 A. No, I'm not saying I don't receive 11 any. You asked me -- we may have received 12 those. I don't typically -- like the sheriff's 13 document you showed me, Exhibit 5, I'm not on 14 the sheriff's media release list. 15 Q. Why not? 16 MS. HERMIZ: Objection to form. 17 A. You would have to ask the sheriff 18 why not. I don't -- 19 Q. Have you ever sought to be? 20 A. No. I have enough information 21 coming in in a day, with 175 e-mails, that I'm 22 not looking for that. It's something that I'll 23 be made aware of if that's necessary. Our 24 communications director is primarily the person 25 that gets the media releases.</p>
<p style="text-align: right;">Page 127</p> <p>1 several years, so I do not send them, I receive 2 them. 3 Q. Okay. Do you receive calendar 4 invitations to meetings related to drug issues? 5 A. I believe for the Summit County Drug 6 Unit, we do get calendar notifications for that. 7 Q. Do you receive agendas or meeting 8 materials related to drug issues? 9 A. Usually the agenda is passed out at 10 the meeting, the Summit County Drug Unit. 11 Q. You said "usually." Is it sometimes 12 e-mailed? 13 A. It may have been. I don't recall. 14 Q. What other types of documents do you 15 receive in hard copy or electronic format 16 related to drug issues? 17 A. If an officer doesn't show up for a 18 meeting with one of the prosecutors in 19 preparation for trial, they might send that out. 20 If we're waiting on a lab report from BCI, 21 someone may send out an e-mail saying -- in that 22 Z Trial maybe saying we don't have a BCI report 23 and we may have to call BCI for it. 24 Q. Do you receive media releases or 25 other announcements from law enforcement agents</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. So if it were necessary for you to 2 find out about breaking news regarding a drug in 3 your community, how would you find out about it? 4 MS. HERMIZ: Objection to form. 5 A. If it's an issue related to our 6 office, usually I have an officer show up at my 7 office to meet. 8 Q. So you haven't requested to be part 9 of their e-mail announcement list or anything? 10 A. As to what? 11 Q. As to drugs. 12 A. Again, if an officer has a need to 13 communicate with me, they will communicate with 14 me. 15 Q. And you would expect them to come to 16 your office in person? Is that what you said? 17 A. No. I would expect them to come to 18 my office, call me or send me an e-mail. 19 Q. And have you received e-mails from 20 officers regarding drugs? 21 A. I'm sure over the years I have. 22 Q. Have you ever maintained a notebook 23 or diary with notes of your work activities? 24 A. No. 25 Q. Do you have a cell phone for work?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 Q. Do you receive texts on your work</p> <p>3 cell phone?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do those texts sometimes relate to</p> <p>6 opioid matters?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did anybody ever collect your cell</p> <p>9 phone to download your texts for production in</p> <p>10 this case?</p> <p>11 A. I don't know.</p> <p>12 Q. Have you ever given your work cell</p> <p>13 phone to someone for that purpose?</p> <p>14 A. No.</p> <p>15 Q. Do your texts sometimes relate to</p> <p>16 drug matters?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Do you know that to be certain?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. Yes.</p> <p>21 Q. Have you reviewed your text</p> <p>22 messages?</p> <p>23 A. No.</p> <p>24 Q. How far back do your text messages</p> <p>25 go?</p>	<p style="text-align: right;">Page 132</p> <p>1 your memory of the texts at the time you sent or</p> <p>2 received them because you have not gone back and</p> <p>3 reviewed them; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Did you or anybody else collect your</p> <p>6 computer to search for documents related to this</p> <p>7 litigation?</p> <p>8 A. I believe our IT person did that and</p> <p>9 county IT also did that.</p> <p>10 Q. Do you maintain hard copies of</p> <p>11 documents in your office?</p> <p>12 A. No.</p> <p>13 Q. You don't have any hard copies of</p> <p>14 documents in your office?</p> <p>15 A. Not that I maintain.</p> <p>16 Q. What hard copies of documents do you</p> <p>17 have in your office? What types of documents do</p> <p>18 you have?</p> <p>19 A. I may have cases that I'm reviewing</p> <p>20 that are going to go back into the case file or</p> <p>21 be disposed of.</p> <p>22 Q. Did anybody collect those hard copy</p> <p>23 documents from your office to review them?</p> <p>24 MS. HERMIZ: Objection to form.</p> <p>25 A. Can you narrow down what documents</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I have no idea.</p> <p>2 Q. How frequently do you communicate</p> <p>3 via text message regarding drug matters?</p> <p>4 A. None that -- that I'm aware of.</p> <p>5 Q. Who do you communicate via text</p> <p>6 message with?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 A. I said I have not as far as I know.</p> <p>9 Q. Who do you communicate via text</p> <p>10 message with on your work phone regarding any</p> <p>11 matter?</p> <p>12 A. I try to not communicate with anyone</p> <p>13 on it. If I receive a communication, I'll</p> <p>14 respond to it.</p> <p>15 Q. Sitting here today, you cannot</p> <p>16 recall whether you have received or sent any</p> <p>17 text messages regarding drug matters?</p> <p>18 MS. HERMIZ: Objection to form.</p> <p>19 Q. Would you agree with that?</p> <p>20 A. No, I would not agree with that.</p> <p>21 Q. You're certain that you have not</p> <p>22 sent or received any text messages on your work</p> <p>23 phone regarding drug matters?</p> <p>24 A. To the best of my recollection, yes.</p> <p>25 Q. And your recollection is based on</p>	<p style="text-align: right;">Page 133</p> <p>1 or what type of documents you're talking about?</p> <p>2 Q. I'm referring to the hard copy</p> <p>3 documents that you just testified are in your</p> <p>4 office. Has anyone gone in to look at those</p> <p>5 hard copy documents in connection with this</p> <p>6 litigation?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 A. In connection with this litigation,</p> <p>9 meaning drug-related documents?</p> <p>10 Q. My question is, has anyone reviewed</p> <p>11 all the hard copy documents in your office to</p> <p>12 determine whether any are related to this</p> <p>13 litigation?</p> <p>14 MS. HERMIZ: Objection to form.</p> <p>15 A. I have been told to turn over any</p> <p>16 documents I have, and I've done that.</p> <p>17 Q. Have you reviewed all the hard copy</p> <p>18 documents currently in your office for that</p> <p>19 purpose?</p> <p>20 A. Yes.</p> <p>21 Q. Has your offices -- did you receive</p> <p>22 a hold notice when this litigation was initiated</p> <p>23 telling you and your staff not to delete any</p> <p>24 records that may have relevant information?</p> <p>25 A. I believe the county executive's</p>

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1 office forwarded an e-mail to us. I remember a  
 2 reminder of that coming out a few months ago.  
 3 Q. When did you first receive the  
 4 notice?  
 5 A. Which notice?  
 6 Q. The original hold notice.  
 7 A. I don't recall.  
 8 Q. Can you estimate for us when you  
 9 first received that?  
 10 A. It's been a while.  
 11 Q. How long?  
 12 A. I don't know.  
 13 Q. What time of year was it when you  
 14 first received the hold notice?  
 15 A. I have no idea.  
 16 Q. Has it been a month or longer?  
 17 A. I would say longer than a month.  
 18 Q. Has it been a year or longer?  
 19 A. I think we just passed that point  
 20 where I can't recall that part.  
 21 Q. So it's been some point between a  
 22 month and 12 months?  
 23 A. It's some point between a month and  
 24 longer.  
 25 Q. But certainly less than a year?

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1 A. I don't know.  
 2 Q. So it could have been two years ago?  
 3 A. I don't know.  
 4 Q. What did the litigation hold notice  
 5 say?  
 6 MS. HERMIZ: Objection to form.  
 7 A. I don't have a copy of it in front  
 8 of me.  
 9 Q. What was your understanding of what  
 10 it said?  
 11 A. Anything related to the opioid case  
 12 and the opioid crisis we were to turn over for  
 13 discovery purposes.  
 14 Q. Did you also understand that you  
 15 were not to delete any records that may have  
 16 relevant information?  
 17 A. Yes.  
 18 Q. Did you abide by that notice?  
 19 A. As best I could, yes.  
 20 Q. And so does that mean that you've  
 21 suspended the document retention policy so as  
 22 not to delete any records that may have relevant  
 23 information in this case?  
 24 A. No. As to this case, yes. As to  
 25 everything else, no.

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1 Q. Are you still deleting e-mails that  
 2 may relate to drug cases?  
 3 MS. HERMIZ: Objection to form.  
 4 A. Well, that's presuming I was  
 5 deleting them in the first place. The e-mails  
 6 -- since we received that notice I am deleting  
 7 my e-mails that are not related to these cases.  
 8 Q. Have you deleted or destroyed any  
 9 documents or materials related to opioids?  
 10 A. Not that I'm aware of.  
 11 Q. My question, to be clear, is  
 12 referring throughout your time at the Summit  
 13 County Prosecutor's Office. So prior to  
 14 receiving the litigation hold notice, did you  
 15 delete or destroy documents or materials related  
 16 to opioids?  
 17 A. We complied with our retention  
 18 policy.  
 19 Q. And in doing so, did you delete or  
 20 destroy any documents relating to opioids?  
 21 A. I'm sure there were e-mails that  
 22 were deleted, yes.  
 23 Q. Are you aware that case files from  
 24 your office have been produced in this  
 25 litigation?

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1 A. I would hope so.  
 2 Q. Were you involved in any way in  
 3 determining which case files to produce?  
 4 A. I believe we said anything relating  
 5 to heroin or opiates was to be produced.  
 6 Q. Did you produce cases that involved  
 7 street drugs, like heroin, even if they didn't  
 8 involve prescription opioids?  
 9 MS. HERMIZ: Objection to form.  
 10 A. I don't know what was produced. You  
 11 would have those records.  
 12 Q. Do you know who was involved in  
 13 deciding which case files to produce?  
 14 A. I believe they were advised -- I  
 15 think -- Merritt Hannah I think is the name of  
 16 the assistant prosecutor that was handling  
 17 those.  
 18 Q. Who was overseeing that process?  
 19 A. I believe Merritt Hannah was the  
 20 prosecutor assigned to that matter.  
 21 Q. Mr. Gessner, what do you consider to  
 22 be an e-mail related to this case such that you  
 23 would not delete it today?  
 24 MS. HERMIZ: Objection to form.  
 25 A. Any e-mail involving heroin or

<p style="text-align: right;">Page 138</p> <p>1 opiate-related cases.</p> <p>2 Q. Do you consider e-mails related to</p> <p>3 this case to also apply to e-mails that are not</p> <p>4 discussing a particular prosecution or a</p> <p>5 particular case in your office but are</p> <p>6 discussing the issue more broadly?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 A. I don't recall specifically what was</p> <p>9 in the retention letter, but whatever was in the</p> <p>10 retention letter is what we tried to</p> <p>11 accommodate.</p> <p>12 Q. Do you understand e-mails related to</p> <p>13 this case to encompass e-mails related to</p> <p>14 discussions on meth amphetamine?</p> <p>15 A. I don't recall if that was in the</p> <p>16 retention letter.</p> <p>17 Q. Do you consider an e-mail related to</p> <p>18 this case to be an e-mail related to cocaine?</p> <p>19 A. If that was in the retention letter.</p> <p>20 Q. Have you deleted e-mails regarding</p> <p>21 meth amphetamine or cocaine?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. Whatever e-mails, if they were</p> <p>24 deleted, I believe county IT was able to go back</p> <p>25 and recover those, and I think those were</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. HERMIZ: Objection to form.</p> <p>2 A. I have no idea.</p> <p>3 Q. Is it your understanding that that</p> <p>4 is a continuing process that county IT has</p> <p>5 engaged in on a daily basis?</p> <p>6 A. You would have to ask county IT on</p> <p>7 that.</p> <p>8 Q. Is it your understanding that you're</p> <p>9 not to delete e-mails related to meth</p> <p>10 amphetamine due to the litigation hold in this</p> <p>11 case?</p> <p>12 A. Again, I don't have that litigation</p> <p>13 hold in front of me to tell me if that was in</p> <p>14 there yet.</p> <p>15 Q. Sitting here today, if you were</p> <p>16 faced with a decision whether or not to delete</p> <p>17 an e-mail regarding meth amphetamine.</p> <p>18 A. If it was a drug-related case, I</p> <p>19 would not delete it.</p> <p>20 Q. You would not delete it?</p> <p>21 A. No.</p> <p>22 Q. And have you deleted any</p> <p>23 drug-related e-mails since receiving the</p> <p>24 litigation hold?</p> <p>25 A. Not that I'm aware of.</p>
<p style="text-align: right;">Page 139</p> <p>1 provided.</p> <p>2 Q. How do you know that -- is it your</p> <p>3 understanding that county IT got involved in</p> <p>4 recovering some of the e-mails you had deleted?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. First of all, you're presuming I</p> <p>7 deleted something, so if you want to --</p> <p>8 Q. Okay. I'm trying to understand.</p> <p>9 Your answer was that it was your belief that</p> <p>10 county IT was able to go back and cover those</p> <p>11 and I think they were provided, so can you</p> <p>12 explain those?</p> <p>13 A. Recover those, not cover those.</p> <p>14 Recover those. We were advised by the county</p> <p>15 executive's office, the law department, that</p> <p>16 they did not feel that there were enough e-mails</p> <p>17 there, or the e-mails were there, that the IT</p> <p>18 was going to go -- that the county IT was going</p> <p>19 to go look and see if there was anything</p> <p>20 pertinent and those would be provided. I was</p> <p>21 then at a later time told they were provided.</p> <p>22 So whether or not those were mine or anyone</p> <p>23 else's, I do not know.</p> <p>24 Q. On what date did the county IT</p> <p>25 review and prepare to produce relevant e-mails?</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Going back to the decisions to</p> <p>2 prosecute involuntary manslaughter heroin cases,</p> <p>3 to your knowledge, how many overdose deaths have</p> <p>4 occurred in your jurisdiction between 2013 and</p> <p>5 the present day?</p> <p>6 MS. HERMIZ: Objection to form.</p> <p>7 A. Way too many. In the hundreds.</p> <p>8 Q. And if there are hundreds of</p> <p>9 overdose deaths, why have you indicted only 55</p> <p>10 of the cases?</p> <p>11 A. What you have to understand is the</p> <p>12 first thing is the resources. Again, you look</p> <p>13 at a particular overdose death where the medical</p> <p>14 examiner is going to do an autopsy and the</p> <p>15 toxicology report is going to come back and it's</p> <p>16 going to have heroin, fentanyl, carfentanil,</p> <p>17 Percocets, oxycodone, whatever those drugs may</p> <p>18 be that are listed in there. First of all,</p> <p>19 was -- were there any witnesses to the death.</p> <p>20 We're going to look and see are there -- if</p> <p>21 there are no witnesses, were there any cell</p> <p>22 phones left that the police could go back and</p> <p>23 try to trace again where those drugs may have</p> <p>24 come from, anything there that's going to give</p> <p>25 us leads, again, anything on social media, on</p>



<p style="text-align: right;">Page 142</p> <p>1 Facebook. I mean, we've had cases where on 2 Facebook individuals have gone on and 3 acknowledged they provided the drugs that caused 4 someone's death and asking for their friends to 5 send them sympathy. 6 Q. So you're referring to the quality 7 and the quantity of evidence as a factor in 8 whether or not an overdose death may have been 9 prosecuted? 10 A. Oh, evidence is the first thing. If 11 there's no evidence, there can be no 12 prosecution. Second then is the manpower. 13 So, first of all, if a case, even 14 without investigation, there is enough evidence 15 to link somebody but you don't have the manpower 16 or the resources in law enforcement to 17 investigate it, it doesn't matter how good the 18 evidence is. So, again, law enforcement -- this 19 is something they've had to play catch-up with 20 because of the volume of the crimes here. So 21 when they went out then again clearly 22 undermanned in their ability, when, with the 23 crisis we had in the City of Akron, and the 24 police were able to dedicate two officers, two 25 detectives to handle this, and that was all they</p>	<p style="text-align: right;">Page 144</p> <p>1 would have declined for insufficient evidence? 2 A. No. 3 Q. And if you decline them for 4 insufficient evidence for involuntary 5 manslaughter charges, you may have still 6 prosecuted the defendant for other -- 7 A. We may have still been able to 8 prosecute for corrupting, another one, for 9 giving them drugs, for trafficking, for selling 10 them the drugs. Again, those are other things 11 out there. 12 Q. Have you indicted for involuntary 13 manslaughter in every case in which you had 14 sufficient evidence? 15 A. Yes. 16 Q. Has there been any case that your 17 office has had to turn away due to lack of 18 resources in the prosecutor's office? 19 A. See, we don't -- we don't turn cases 20 away for lack of resources. Again, we do -- if 21 you look at those budgets and you see one year 22 3,700 cases, the next year 4,000 cases, you're 23 not really going to see any increase in the 24 budget, and if there is, it's very minimal. No 25 increase in the number of prosecutors during</p>
<p style="text-align: right;">Page 143</p> <p>1 could do, and that was a stretch, again, we're 2 starting with 50 to a hundred cases for 3 Detective Schmidt and Harvey, and they're able 4 to work on one or two at a time. So those are 5 going to come in and then we're going to review 6 them, again, waiting for the medical examiner, 7 who has so many bodies sitting in their morgue 8 that they can't do the autopsies. Again, all 9 those things -- everything in this -- on that 10 number that you asked me about all goes back to 11 the lack of resources that this community has to 12 fight this crime. 13 Q. How many cases have been referred to 14 your office for potential involuntary 15 manslaughter charges? 16 A. I would say the majority of what 17 have been referred have been indicted. Again, 18 there have been some where we've told police 19 there isn't enough evidence here. 20 Q. So is it fair to say approximately 21 55 cases have been presented to your office? 22 A. No. As I said, if -- in most cases 23 we took those cases. There may be other ones 24 where we said there wasn't sufficient evidence. 25 Q. And do you know how many cases you</p>	<p style="text-align: right;">Page 145</p> <p>1 there. It's just they're doing more. So -- 2 Q. And as a former prosecutor myself, I 3 understand prosecutors are salaried, right? 4 A. Um-hum. 5 Q. And if there are more cases, they 6 just work harder, longer hours, correct? 7 A. Yes. 8 Q. Are your prosecutors paid overtime? 9 A. No. They are actually overtime 10 exempt under federal law. 11 Q. And so there has never been an 12 instance where your office had to say we cannot 13 charge involuntary manslaughter in this case 14 because we don't have enough prosecutors to 15 bring the case to resolution? There's never 16 been a situation where that's occurred? 17 A. No. 18 Q. Why didn't your office begin filing 19 those involuntary manslaughter charges in 20 overdose deaths prior to 2013? 21 A. Well, first of all, when we saw the 22 swelling of the number of victims in these 23 cases, we looked to see. In the past there's, 24 again, that link between the cause of death 25 and -- the drug and the cause of death. A lot</p>



<p style="text-align: right;">Page 146</p> <p>1 of times you had law enforcement was not 2 looking. 3 Again -- and, again, going back to 4 Detective Schmidt and Harvey, law enforcement 5 started investigating these things differently 6 in that same time period. It is, again, where 7 we're able to prosecute. Again, if they're not 8 knowing to collect those cell phones, they're 9 not knowing to look -- to go on social media, 10 they're not making those connections -- I mean, 11 quite frankly, I think there was a lot of times 12 where it was this is a -- this is a drug abuser 13 and they died. That's part of the chance of 14 what they're doing. And, again, seeing again 15 those bodies pile up was no, we have to address 16 this, we have to find a way. 17 So we had EMTs who would go in and 18 trample our crime scenes and destroy evidence. 19 We've had ones where there was a needle sitting 20 there and they threw it in the trash, again, not 21 knowing. 22 So, again, law enforcement, having 23 to change their way of dealing with this, not 24 realizing again, that this wasn't just someone 25 who OD'd, this was someone who was given illegal</p>	<p style="text-align: right;">Page 148</p> <p>1 preserve what may not have been historically 2 looked at as a crime, yes. 3 Q. You've mentioned the legislature a 4 few times and politicians today. In your 5 opinion, have politicians or bureaucrats stymied 6 law enforcement and your office's ability to 7 tackle the opioid problem in Summit County? 8 MS. HERMIZ: Objection to form. 9 A. I think they haven't provided us 10 with the funding to tackle this properly. 11 There's a lack of resources that is the problem. 12 Q. You mentioned just now a failure to 13 communicate within the legislature. What did 14 you mean by that? 15 A. I think that our state legislature 16 is no different than our federal legislature, 17 that I -- they're worried about staying where 18 they are rather than providing the funds and 19 resources for all of us to do our job and make 20 our community safer. 21 Q. In your opinion, who should they be 22 communicating with more? 23 MS. HERMIZ: Objection to form. 24 A. Each other. 25 Q. In your opinion, has the decision to</p>
<p style="text-align: right;">Page 147</p> <p>1 drugs, this was someone who was hooked onto 2 something and someone who something was put in 3 their drugs that caused them to die, it changed 4 the way we looked at these cases. 5 So we were actually, I think, in the 6 lead in the State of Ohio in dealing with these 7 cases and addressing these cases and coming with 8 the manslaughter charges. We would go to 9 meetings and have other prosecutors from around 10 the state saying, well, no, you can't charge. 11 We need -- some people would say we need a 12 specific law, like Indiana just passed this 13 year, and we're not going to prosecute until we 14 get that law. And then we have a legislature 15 that, I mean, can't communicate to itself. 16 So we looked and took it upon 17 ourselves, working with law enforcement, to say 18 how can we do something here, how can we make a 19 difference since no one else is. 20 Q. So it sounds like one of the factors 21 that helped lead to your ability to charge these 22 cases is educating or training law enforcement 23 agents on how to effectively investigate those 24 types of cases and preserve evidence? 25 A. How to effectively investigate and</p>	<p style="text-align: right;">Page 149</p> <p>1 start charging involuntary manslaughter affected 2 the incident of overdose deaths in your county? 3 MS. HERMIZ: Objection to form. 4 A. I believe that our efforts, along 5 with local law enforcement, has created some 6 public awareness and has worked to reduce the 7 number of people that are needlessly dying from 8 this epidemic. 9 Q. And is that because a more severe 10 charge or sentence have a greater deterrence 11 impact on would be drug suppliers? 12 MS. HERMIZ: Objection to form. 13 A. Could you repeat that? 14 Q. Is the reason for that because a 15 more severe penalty may deter someone who would 16 supply drugs? 17 MS. HERMIZ: Same objection. 18 A. I think the deterrent here has been 19 the public awareness that our office, the local 20 law enforcement, the Summit County community has 21 gone through -- when you look at Summit County 22 creating an opiate task force to educate the 23 community, working closely with the health 24 department, and that getting information out -- 25 I mean, where parents are telling their kids</p>

<p style="text-align: right;">Page 150</p> <p>1 don't even take a chance here -- I mean, I just  2 saw on Facebook the other day a post someone put  3 on that two 20-year-old college students were --  4 got Percocet pills and the mother went in and  5 found them both there dead, that they had been  6 spiked with fentanyl.  7 Q. I'm sorry to interrupt. My question  8 was about the effect that that charging policy  9 may have had on the opioid problem in Summit  10 County. I know you started talking about the  11 task force and public awareness. But I want to  12 know, what's your opinion of the effect that the  13 involuntary manslaughter charges have had on the  14 problem in Summit County.  15 A. I think we're a part of seeing a  16 reduction and an awakening in the community of  17 this, and those charges have permitted this to  18 get to the front page of the paper and open  19 people's eyes to this, this and everything else  20 being done in the county to be proactive on this  21 rather than just sit back and watch people die,  22 is why we're having a reduction in the number of  23 cases.  24 Q. You mentioned the reduction in the  25 number of cases. What types of cases have you</p>	<p style="text-align: right;">Page 152</p> <p>1 treatment?  2 A. Within the resources we have had  3 available, I think we've done our best.  4 Q. What is your basis for reaching that  5 conclusion?  6 A. Seeing the number of deaths go down.  7 Q. What pre-indictment screening is  8 done by your office to identify defendants who  9 are at risk of opioid overdose?  10 A. We don't have any resources to do  11 anything like that.  12 Q. Are interviews of defendants  13 conducted to determine their risk of opioid  14 overdose?  15 A. Not by the Summit County  16 Prosecutor's Office.  17 Q. Do you know if those interviews are  18 done by court employees or probation or pretrial  19 services or anyone else employed by the county?  20 A. I don't know if those are done,  21 period.  22 Q. Do you know what percentage of  23 criminal defendants are given the opportunity to  24 be diverted into sobriety and addiction recovery  25 programs?</p>
<p style="text-align: right;">Page 151</p> <p>1 seen reduced?  2 A. The deaths relating to opiate use.  3 Q. And do you have specific statistics  4 or data regarding the trend in overdose deaths  5 over time that you can refer to?  6 A. I believe there was an article in  7 the Beacon Journal just the other day on that.  8 I don't have a copy of it, though.  9 Q. How do the overdose deaths in Summit  10 County -- how does the trend in that compare to  11 the trend in overdose deaths in other counties  12 that don't charge involuntary manslaughter  13 charges?  14 MS. HERMIZ: Objection to form.  15 A. I don't have those numbers.  16 Q. When we were talking about the  17 involuntary manslaughter charges, you shared  18 that defense attorneys had some criticism, and  19 we discussed that article that had been written  20 by a former heroin addict, also criticizing the  21 practice of those harsh charges.  22 MS. HERMIZ: Objection to form.  23 Q. In your view, has Summit County as a  24 whole, not just the prosecutor's office, but has  25 Summit County adequately helped addicts get</p>	<p style="text-align: right;">Page 153</p> <p>1 A. No, I do not.  2 Q. Would you agree that it is common in  3 low level felony drug cases to see situations of  4 criminal defendants overdosing on opioids during  5 the pendency of their case?  6 MS. HERMIZ: Objection to form.  7 A. Could you repeat that?  8 Q. Would you agree -- in your  9 experience at the Summit County Prosecutor's  10 Office, have you seen that it is common in low  11 level felony drug cases to see situations of  12 criminal defendants overdosing on opioids during  13 the pendency of their case?  14 A. We've had a few, I think, that have,  15 but I don't know -- and I don't think I would  16 use the word "common," but it's happened.  17 Q. I'd like to direct your attention to  18 that first exhibit that's right in front of you,  19 the one you just pushed to the side.  20 A. Okay.  21 Q. If you look at the page that ends  22 64903, again, this is that grant application  23 that was filed by your office?  24 A. Um-hum.  25 Q. I know you didn't draft it, but at</p>

<p style="text-align: right;">Page 154</p> <p>1 the bottom of page SUMMIT 64903, it states, "It 2 has become all too common in low level felony 3 drug cases to see situations of criminal 4 defendants overdosing on opiates during the 5 pendency of their case." 6 A. Um-hum. 7 Q. Do you have any basis to disagree 8 with that conclusion? 9 MS. HERMIZ: Objection to form. 10 A. I don't know. As I said, it's 11 happened. I wouldn't use the word "common" as 12 being frequent, but if it happens even once, 13 that's too many. 14 Q. And do you have any basis to 15 disagree with the conclusion in this document 16 that it's become all too common? 17 MS. HERMIZ: Objection to form. 18 A. Again, I did not draft this 19 document. I did not do the research. They did. 20 From my knowledge and my experience, I would say 21 I'm aware it happens, and that, like I said, 22 even once is too many. 23 Q. How many such cases are you aware 24 of? 25 A. I know of a couple, and again, I</p>	<p style="text-align: right;">Page 156</p> <p>1 you aware of instances in which a criminal 2 defendant has overdosed and died while their 3 criminal case was pending with your office? 4 A. Yes. 5 Q. How many such cases? 6 A. That's when I said one or two maybe. 7 Q. In addition, are you also aware of 8 cases in which criminal defendants have 9 overdosed but not died during the pendency of 10 their criminal cases? 11 A. I have heard of that, but I am not 12 aware of any specific cases. 13 Q. In this grant application, your 14 office is requesting funding, and if you look 15 back at SUMMIT 64903, one of the ways in which 16 your office proposed to use that funding is to 17 conduct, as discussed at the bottom of the page 18 just before the sentence I read earlier, a 19 pre-indictment screening in order to separate 20 the treatment of opiate traffickers from the 21 prosecution of opiate-using offenders. "It is 22 necessary in the development of such a program 23 to not only focus on opiate dealers but to also 24 identify the population which is made up of 25 criminal defendants who are at risk for opiate</p>
<p style="text-align: right;">Page 155</p> <p>1 can't quantify it. 2 Q. What are those defendants' names? 3 A. I cannot give you those names. I do 4 not have them. 5 Q. Who would have that information? 6 A. You would have to go probably -- 7 probably the easiest way to get that would be 8 maybe through the court, to determine any cases, 9 because they would be -- if someone died while a 10 case was pending, the court would have the 11 dismissal on that, and, most likely, would have 12 placed on the record the reason for the 13 dismissal. 14 Q. What if they overdosed but didn't 15 die and the case went forward? How would we go 16 about determining how many defendants overdosed 17 during the pendency of their criminal case? 18 A. And that may be where on page 4903 19 they came up with too common of individuals who, 20 I read it as, overdosing and dying. If it was 21 overdosing and staying -- continuing on -- 22 again, that would probably be something that the 23 probation department or pretrial release would 24 have information on. 25 Q. Okay. So just so we're clear, are</p>	<p style="text-align: right;">Page 157</p> <p>1 overdose." 2 To your knowledge, has your office 3 undertaken to conduct that sort of 4 pre-indictment screening? 5 A. No. We do not have the resources 6 for that. I think that's why we asked for it in 7 the grant. 8 Q. And you did not receive this grant 9 money? 10 A. No. 11 Q. Are you aware of other grants that 12 your office has applied for related to opioids? 13 A. No. 14 Q. Are you aware of grants related to 15 opioids that your office knew of but did not 16 apply to? 17 A. No. I am not aware of any that we 18 could have applied for that we did not. 19 Q. In your opinion, how effective is 20 the Ohio prison system at rehabilitating 21 offenders? 22 MS. HERMIZ: Objection to form. 23 Q. We're done with that exhibit. 24 A. Years ago there was a judge, Peter 25 Economus, he was a Mahoning County Common Pleas</p>

<p style="text-align: right;">Page 158</p> <p>1 judge, and he stated -- this would be before I  2 began at Summit County -- that the prison system  3 was for punishment, no longer for  4 rehabilitation.  5 Q. Do you agree with that?  6 A. When I prosecute cases, the  7 sentences I ask for are usually for punishment  8 and protection of the community.  9 Q. So you do not look to the prisons --  10 A. No. I think you need -- I think you  11 need community-based corrections programs to  12 rehabilitate people. Systems set up like Oriana  13 House and that is where you're going to see a  14 benefit. Again, in connection with the  15 community, if someone is taken away from their  16 problem and put in prison and given all these  17 programs but they come back and then the problem  18 is still existing in their community, their  19 likelihood for success is going to be decreased.  20 You've got to change that in the entire  21 community. Again, you need all of those  22 resources locally if you want to address the  23 problems.  24 Q. But you send a good number of drug  25 offenders to prison, right?</p>	<p style="text-align: right;">Page 160</p> <p>1 been incarcerated and received treatment.  2 Q. How effective is the Ohio prison  3 system at providing treatment and counseling to  4 incarcerated individuals who have substance  5 abuse problems?  6 MS. HERMIZ: Objection to form.  7 A. I don't know.  8 Q. Do you have any opinions on that  9 matter?  10 MS. HERMIZ: Same objection.  11 A. Again, absent local resources, I --  12 we're not going to address this in a prison.  13 We're going to protect people by putting  14 criminals in prison, but we're not going to  15 address the system without local funding of it.  16 Q. Do you know how many incarcerated  17 people participate in treatment or counseling  18 programs in Ohio prisons?  19 A. From going to the patrol board on  20 different cases, pretty much everyone does. If  21 they want any hope at getting their sentences  22 reduced or shortened, getting opportunities for  23 judicial release, they're going to be  24 participating or at least attempting to  25 participate.</p>
<p style="text-align: right;">Page 159</p> <p>1 MS. HERMIZ: Objection to form.  2 Q. In fact, you send -- the majority of  3 drug defendants who are convicted ultimately go  4 to prison, right?  5 A. That would depend on what level  6 their felony degree is, because right now under  7 the Ohio law with the T-CAP, felons of fourth  8 and fifth degree are not being sent to prison.  9 Q. But for the ones who are sent to  10 prison, you advocate for a sentence in prison  11 for punishment reasons, not because you believe  12 it would rehabilitate them?  13 MS. HERMIZ: Objection to form.  14 A. We would hope they are  15 rehabilitated, but it's for punishment and  16 protection of the community.  17 Q. What is the recidivism rate in Ohio?  18 A. I don't know.  19 Q. Do you know how the recidivism rate  20 has changed over time?  21 A. What I've -- from the years that  22 I've worked with community-based correction  23 facilities and programs, those individuals  24 receiving the treatment locally have been much  25 more successful than those individuals who have</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Does your office do anything to  2 incentivize their participation in those  3 programs?  4 A. That would be beyond the authority  5 of a county prosecutor.  6 Q. Does the prison do anything to  7 incentivize their participation in those  8 treatment programs?  9 A. You would have to ask them.  10 Q. Do you believe law enforcement has  11 been effective in enforcing drug laws?  12 MS. HERMIZ: Objection to form.  13 A. Do you want to narrow what law  14 enforcement --  15 Q. How about let's start with the DEA.  16 Do you believe the DEA has been effective in  17 enforcing drug laws?  18 MS. HERMIZ: Same objection.  19 A. I think we can only be as effective  20 as -- as the criminals are creative. Again,  21 without resources, we're not going to be  22 effective.  23 Q. You mentioned creative criminals, so  24 I'm going to shift gears for a moment and talk  25 with you about opioids and opioid diversion.</p>



<p style="text-align: right;">Page 162</p> <p>1 Let's start by establishing when you first  2 became aware that prescription opioids were a  3 problem for your county.  4 A. Probably shortly after coming to  5 Summit County in the prosecutor's office.  6 Q. And that was around 2001?  7 A. 2001, so I would say it was  8 somewhere between 2001 and 2003 I tried my first  9 case of prescription drug abuse in Summit  10 County.  11 Q. What were the facts or the nature of  12 that case?  13 A. A city councilman was charged with  14 selling and possessing OxyContin, oxycodone;  15 with doctor shopping, going to various doctors  16 in Summit County and even one in Portage County;  17 and there was some information that, while he  18 had claimed he had back pain and his defense was  19 his addiction to the drugs, and that he was  20 lawfully prescribed them. Again, the various  21 doctors were either unaware or were treating him  22 for different symptoms.  23 Q. Did you charge the doctors as well  24 in that case?  25 A. No, not in that case, again, because</p>	<p style="text-align: right;">Page 164</p> <p>1 approximately 2001 to 2003?  2 A. If it was requested. John Otterman  3 is the name of the defendant. He recently was a  4 member of the Akron School Board and found and  5 Narcan'd back to life in the parking lot of the  6 school.  7 Q. Has he ever been convicted of  8 prescription drug crimes?  9 A. I do not believe so. And he was  10 also in between city council and the school  11 board, was a member of the Ohio legislature.  12 Q. Did you consider prescription  13 opioids to be a problem at the time you  14 prosecuted that case?  15 A. Yes, when I saw the results of what  16 it could do to him.  17 Q. When is the first time that someone  18 overdosed on prescription opioids in Summit  19 County?  20 MS. HERMIZ: Objection to form.  21 Q. Actually, I should ask, has anyone  22 died of an overdose of prescription opioids in  23 Summit County?  24 A. I'm sure they have. You would have  25 to ask the medical examiner that.</p>
<p style="text-align: right;">Page 163</p> <p>1 it was his -- his lying to the doctors. The  2 doctors were not aware that he was going to two  3 or three different doctors until the trial, and  4 actually, one of the doctors changed his mind  5 and said that he was aware he was going to  6 another doctor and that he would have prescribed  7 the drugs anyway.  8 Q. Did that cause any problems for your  9 proof?  10 A. Yes. It was a not guilty.  11 Q. Did you charge any pharmacists in  12 that case?  13 A. No. We were being helped by the  14 pharmacist in that case.  15 Q. How about drug distributors; did you  16 charge any of them?  17 MS. HERMIZ: Objection to form.  18 A. From the investigation we had, we  19 did not go back far enough to see if any drug  20 distributors would have been aware of the case.  21 Q. Okay. Did you charge any drug  22 manufacturers?  23 A. Same answer.  24 Q. Okay. Have you produced the case  25 file for that case which you prosecuted in</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. When was the first time you recall  2 learning that someone had died from an overdose  3 of prescription opioids, if ever?  4 A. I'm sure in some of the cases we've  5 had from some of the nursing homes and that,  6 that that's come up in them, and I'm sure over  7 the years there are different cases. But again,  8 if someone is taking prescription opioids and  9 they overdose on those legally prescribed  10 things, there's nobody for us to charge in that  11 situation, so the case is never going to be  12 investigated and never come to us.  13 Q. Because they were taking a  14 prescription opioid?  15 A. Because they obtained them legally  16 through the law, whether again, it was unknown  17 doctor shopping or what, but since -- and the  18 nature of it was -- was legal. There's no  19 reason that law enforcement would be tipped off.  20 So I think that's sort of an iceberg, that if  21 you see one, you know there's a ton underneath  22 it.  23 Q. So in a situation where someone is  24 taking, let's say, OxyContin, that they had a  25 prescription for from a real doctor, that they</p>



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1 had dispensed to them by a licensed pharmacy, in  
 2 your opinion as a prosecutor, that would not be  
 3 the sort of case you would prosecute even if  
 4 that person ended up overdosing on the medicine?  
 5 A. Well, if they overdosed and died,  
 6 there's no one to charge. If they -- if they  
 7 did not die, the hospitals aren't going to  
 8 report it to us.  
 9 Q. Because it's not considered a crime?  
 10 A. No. I think because of privacy  
 11 laws.  
 12 Q. And what about law enforcement? If  
 13 law enforcement were involved in a situation  
 14 like that, would they report it to your office?  
 15 A. I'm sure law enforcement would  
 16 report it to us if they were involved in it.  
 17 Q. And how would your office respond in  
 18 a case such as that one --  
 19 MS. HERMIZ: Objection to form.  
 20 Q. -- in which an individual used  
 21 prescription medicine that had been prescribed  
 22 to them by a doctor?  
 23 A. We would have to look at it on a  
 24 case by case and see what the facts are, see  
 25 what the evidence is.

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1 Q. Okay. Do you know when OxyContin  
 2 was first released?  
 3 A. No.  
 4 Q. Do you know approximately when?  
 5 A. No idea.  
 6 Q. Now, you mentioned this one case  
 7 that drew your attention to the problem. Were  
 8 you aware of it existing prior to that case  
 9 involving the city councilman?  
 10 A. Of people doctor shopping and that,  
 11 absolutely.  
 12 Q. When did you first become aware of  
 13 issues related to the diversion of opioids?  
 14 A. I don't know. Just, I mean, in  
 15 general.  
 16 Q. And how did the problem of opioid  
 17 prescriptions evolve over time in Summit County?  
 18 A. Well, what we've seen in pretrial --  
 19 I mean, in defenses on our cases, in either  
 20 medical exams or pretrial sentencing reports, or  
 21 post-sentencing -- or post-trial sentencing  
 22 reports, individuals talking about how they --  
 23 they ended up into the heroin, into the fentanyl  
 24 and everything because of the fact that they  
 25 couldn't get the prescriptions anymore, again

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1 because the pharmacy board was, again through  
 2 OARRS or other systems like that, flagging them.  
 3 So again, when their legal supplies, whether  
 4 they were going about getting them legally or  
 5 illegally on the doctor shopping, but the legal  
 6 supplies were being made more difficult, then  
 7 the use of heroin, and ultimately heroin and  
 8 fentanyl, and -- that came into play.  
 9 We've seen individuals, I mean, in  
 10 their 60s and 70s dying from the heroin  
 11 overdoses. Again, this is something that  
 12 isn't -- isn't just in the City of Akron. I  
 13 mean, we have them from all walks of life, being  
 14 young kids, being elderly people, again, and  
 15 those, the elderly ones are the ones that seem  
 16 to tie back to starting on the prescription  
 17 drugs. Again, we see all of that, and we see it  
 18 throughout the county. It's -- it's equal  
 19 opportunity as a killer in our community. It's  
 20 not targeted to one socioeconomic section or  
 21 not. So that's what we've seen in the evolution  
 22 of it.  
 23 Q. And in support of those statements,  
 24 you said you relied on which documents, the pre  
 25 and post-sentence reports?

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1 A. Some of them in actually our police  
 2 reports, where the families will say, look, they  
 3 had a problem, they were -- they were -- the  
 4 doctor was giving them pain medicine. It just  
 5 wasn't working anymore. So we've got that. We  
 6 have individuals, again, who are using these for  
 7 defenses.  
 8 Q. Right. So I'm asking which  
 9 documents would support the finding that  
 10 prescription opioids lead to the heroin and the  
 11 fentanyl use.  
 12 A. Police reports, so the reports of  
 13 investigations. The probation reports. So the  
 14 post-trial sentencing briefs and that that go to  
 15 the judges. Any type of reports the defense has  
 16 brought in in mitigation of sentencing. Those  
 17 types of things. Those have all come into play  
 18 in these cases.  
 19 Q. So you're referring to case-specific  
 20 materials. Is it fair to say that your  
 21 knowledge of this issue relies on anecdotal  
 22 evidence in these individual different cases?  
 23 MS. HERMIZ: Objection to form.  
 24 A. As a general matter in these, from  
 25 handling these cases, from reviewing these cases

<p style="text-align: right;">Page 170</p> <p>1 and reviewing these cases with law enforcement,  2 there -- we see the connection between the --  3 what originated as the prescription drugs into  4 the illegal drugs.  5 Q. Sitting here today, can you share  6 with me any statistic or data from a research  7 study that could estimate what percentage of  8 individuals who went through your office had  9 prescription drugs first and then eventually  10 began using heroin or other drugs?  11 A. No, but I can tell you I've talked  12 to the mothers on the phone who have lost  13 children and they've told us about it, family  14 members who have told us about it. So no, I  15 don't have statistical numbers for you.  16 Q. So you're basing that on --  17 A. Real people.  18 Q. -- real people and real accounts of  19 what happened to individuals --  20 A. Yes.  21 Q. -- that you've encountered?  22 A. Yes.  23 Q. Would you agree that OxyContin was  24 identified as a growing threat in Ohio around  25 the same time you joined the Summit County</p>	<p style="text-align: right;">Page 172</p> <p>1 sentences from this report and ask you if you  2 were aware this was the case at the time.  3 So the first sentence is at the very  4 top, the very first sentence of the document.  5 "Diversion and abuse of the prescription pain  6 reliever OxyContin is a major problem,  7 particularly in the eastern United States."  8 The third sentence of that same  9 paragraph, "The pharmacological effects of  10 OxyContin make it a suitable substitute for  11 heroin, therefore, it is attractive to the same  12 abuser population."  13 Two sentences down, "OxyContin  14 abusers who have never used heroin may be  15 attracted to the lower priced heroin when their  16 health insurance no longer pays for OxyContin  17 prescriptions or when they cannot afford the  18 high street-level price of OxyContin."  19 MS. HERMIZ: Objection to form.  20 Q. Do you agree with the statements I  21 just read?  22 MS. HERMIZ: Same objection.  23 A. I don't have knowledge of what was  24 going on in the eastern part of the United  25 States at the time.</p>
<p style="text-align: right;">Page 171</p> <p>1 Prosecutor's Office?  2 MS. HERMIZ: Objection to form.  3 A. I don't -- I don't know when it was  4 identified in -- I mean, I've seen the release  5 you gave me earlier from Sheriff Alexander and  6 I've told you about my experience with John  7 Otterman, but other than that, I don't know the  8 exact dates or times.  9 - - - - -  10 (Thereupon, Gessner Deposition  11 Exhibit 9, Information Bulletin  12 dated January 2001, Bates Numbered  13 SUMMIT_2051829, was marked for  14 purposes of identification.)  15 - - - - -  16 Q. I'm going to hand you what has been  17 marked as Exhibit 10, SUMMIT 2051829. This is  18 an information bulletin dated January 2001.  19 MS. HERMIZ: Counsel, what's Exhibit  20 -- did you say this was 10?  21 MS. WOODS: Yes.  22 MS. HERMIZ: Did we have a 9?  23 MS. WOODS: We'll mark that one  24 Exhibit 9, not 10.  25 Q. And I want to just read a few</p>	<p style="text-align: right;">Page 173</p> <p>1 MS. WOODS: Let's take a break at  2 this time.  3 MS. HERMIZ: Would this be a good  4 place to break for lunch?  5 MS. WOODS: Yes.  6 THE VIDEOGRAPHER: Off the record at  7 12:51.  8  9 (Luncheon recess taken.)  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

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1 THE VIDEOGRAPHER: On the record,  
2 2:04.  
3 -----  
4 AFTERNOON SESSION  
5 CONTINUED EXAMINATION OF BRAD GESSNER  
6 BY MS. WOODS:  
7 Q. Before the break, one of the things  
8 we discussed was the document retention policy.  
9 Have you seen that policy?  
10 A. The document retention policy, yes.  
11 Q. Is it a written policy?  
12 A. Yes.  
13 Q. And where is it located?  
14 A. I believe it's filed with the  
15 Secretary of State, and I believe the county  
16 would have a copy of it, too, and I believe it  
17 was provided through Merritt Hannah, one of our  
18 assistant prosecutors in our civil division.  
19 Q. Provided to whom?  
20 A. Whoever requested it.  
21 Q. In this litigation?  
22 A. Yes.  
23 Q. Regarding the e-mails that you  
24 stated may have been deleted, to your knowledge,  
25 when you delete an e-mail, is there some sort of

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1 archival backup of that e-mail?  
2 A. I don't know. You'd have to ask our  
3 IT person on that.  
4 Q. You've never had to address that  
5 issue personally?  
6 A. No.  
7 Q. In your office, what would you do if  
8 there was a claim of a Brady violation, or  
9 something of that nature, and you needed to go  
10 back and find deleted e-mails?  
11 A. Normally, Brady information wouldn't  
12 be related to e-mails, so Brady is usually  
13 information that we have regarding files, police  
14 reports, documents, so it would be the hard copy  
15 of the file would most likely be the best source  
16 for that.  
17 Q. So I understand that might be most  
18 likely to be the best source, but in the event  
19 that there was a claim that information was  
20 shared about Brady or other prosecutorial  
21 conduct via e-mail, what steps could you do to  
22 try to recover any e-mails that might have been  
23 deleted by your office?  
24 MS. HERMIZ: Objection to form.  
25 A. We would probably contact the county

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1 IT department and have them let us know.  
2 Q. And, to your knowledge, has the  
3 office ever had to do that in any situation?  
4 A. No.  
5 Q. I asked you earlier what the  
6 recidivism rate was in Ohio, and you stated you  
7 did not know. Do you know what the recidivism  
8 rate is in Summit County?  
9 A. No, I do not.  
10 Q. Do you know approximately what the  
11 rate is?  
12 MS. HERMIZ: Objection to form.  
13 A. No, I do not.  
14 Q. Do you have any awareness of how the  
15 recidivism rate in Summit County may have  
16 increased or decreased over the last decade?  
17 A. No, I do not.  
18 Q. As a prosecutor whose role it is to  
19 try to prevent crime, why have you not gathered  
20 information to inform your work about the amount  
21 of offenders who release from prison and  
22 reoffend in your county?  
23 MS. HERMIZ: Objection to form.  
24 A. When there is a specific issue  
25 regarding an individual who has been released

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1 from prison and reoffends, we address that, but  
2 again, we don't have the resources and the  
3 manpower to do all these things that -- what  
4 you're asking for would be good again in a  
5 perfect world with all the resources. But we're  
6 more reactive there. We go out into the  
7 community to try to help make it safe with  
8 different programs that we have, but as to  
9 recidivism rate, that's something that normally  
10 comes up when someone reoffends.  
11 Q. Do you know what type of crimes are  
12 correlated with a higher recidivism rate?  
13 MS. HERMIZ: Objection to form.  
14 A. No, but I would think that -- from  
15 my experience, that drugs, drug crimes;  
16 correlated with the drugs you would have  
17 robberies, burglaries, property offenses, where  
18 people are stealing or breaking into homes to  
19 get money to buy more drugs.  
20 Q. And so based on your experience, are  
21 you saying that you you've observed greater  
22 recidivism among offenders with drug crimes in  
23 their history?  
24 A. No, I did not say that.  
25 Q. What is your understanding, then, of

<p style="text-align: right;">Page 178</p> <p>1 the correlation between drug offenders 2 recidivating relative to the overall offender 3 population? 4 MS. HERMIZ: Objection to form. 5 A. I don't have an opinion about drug 6 offenders and recidivism compared to the overall 7 prison population. 8 Q. You've mentioned a few times today 9 that you were not able to take certain steps due 10 to a lack of resources. What have you done to 11 request additional resources for your office? 12 A. Well, the budget process for Summit 13 County, we have -- going back probably into, I 14 think, 2005 to 2007, we sought additional funds 15 when the county expanded from eight common pleas 16 courts to ten for additional staffing, which 17 included prosecutors, support staff, and I 18 believe one additional supervisor. That was 19 funded by the county at the time. Then when the 20 financial crisis hit in about 2009, our budget 21 was cut, cut significantly, to the point where 22 our starting salaries were reduced, I believe, 23 \$7,000 per starting individual. 24 Since then, the county has been very 25 cautious in what they're doing, so the county</p>	<p style="text-align: right;">Page 180</p> <p>1 A. I think that was the Violence 2 Against Women Act. 3 Q. Is that federal dollars? 4 A. Federal dollars. 5 We -- we have looked to partner, 6 when we can, with -- I -- just, for example, in 7 our civil division we entered into contracts 8 with the county engineer and the health 9 department to offset the cost of a prosecutor 10 assigned to both of those. So we try to do 11 within the -- the realistic resources within the 12 county what we can. 13 Q. Have you formally sought additional 14 resources from the county since 2009? 15 MS. HERMIZ: Objection to form. 16 A. What do you mean by "formally 17 sought"? 18 Q. Have you submitted rationales or 19 submitted proposals or made other pleas for 20 additional resources for your office? 21 A. Yes. At our annual budget we have 22 gone in at times and requested additional money. 23 We have let them know when we're meeting their 24 budget, but are additional things available, and 25 there have not been the funds to take care of</p>
<p style="text-align: right;">Page 179</p> <p>1 budget office will give you the target for your 2 budget. At one point we did go in and seek a 3 court order to have them impose the budget, and 4 that -- we ended up negotiating that. But the 5 county made it clear that there were not funds, 6 additional funds. 7 This year our budget is stagnant 8 from last year, except for the fact that we have 9 to incorporate a 3 percent raise effective next 10 April from the same budget that we had last 11 year. 12 So in going to the county, we've not 13 had opportunity there to seek additional funds 14 because they do not have it. The county did go 15 to the community for a safety tax, I believe, a 16 couple years ago, and that did not pass. That 17 was to increase the sales tax. 18 We've also sought grants, such as 19 the opiate grant here. We had a domestic 20 violence grant that we were receiving. The last 21 time we received it, it was, over a three-year 22 period, \$750,000. That funded three of our 23 prosecutors. 24 Q. What was the source of funding for 25 that grant?</p>	<p style="text-align: right;">Page 181</p> <p>1 those. 2 Q. How are those requests documented? 3 A. They would -- may have been in the 4 budget request. If not, any type of financial 5 request we've made would be something county 6 council would have. And they have a clerk of 7 council. They would have copies of any request 8 Q. Who is that person? 9 A. Mark Potter. 10 Q. Does your office maintain copies of 11 its budget proposals or requests? 12 A. I'm sure we do. 13 Q. And who within your office maintains 14 those records? 15 A. Budget requests, Caitlin Croft, both 16 with Cs. 17 Q. Have those been produced in this 18 litigation? 19 MS. HERMIZ: Objection to form. 20 A. If they've been requested, I'm sure 21 they've been provided. 22 Q. Do you know how many opioid 23 prescriptions were written for Summit County 24 residents last year? 25 A. No.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. Does your office track that 2 information?</p> <p>3 A. I don't think we would be permitted 4 to.</p> <p>5 Q. Why not?</p> <p>6 A. Privacy laws.</p> <p>7 Q. Can you be more specific?</p> <p>8 A. No.</p> <p>9 Q. Is it because the information may 10 contain medical information that's protected by 11 HIPAA?</p> <p>12 A. That could be a reason.</p> <p>13 Q. To your knowledge, does anyone 14 within Ohio track information about the number 15 of opioid prescriptions written for a particular 16 county in a particular year?</p> <p>17 A. I wouldn't have that information.</p> <p>18 Q. I'm not asking if you have the 19 information. I'm just asking if you're aware of 20 any other efforts to track that information 21 within the county.</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. Within the county, no, I'm not.</p> <p>24 Q. Have you ever heard of a database 25 called OARRS?</p>	<p style="text-align: right;">Page 184</p> <p>1 because I signed the document to authorize him 2 for that.</p> <p>3 Q. And what was the name of the chief 4 investigator who had access prior to him?</p> <p>5 A. Benjamin Bergeron, just like the guy 6 on TV.</p> <p>7 Q. How long was he at the office?</p> <p>8 A. Ben, I'm thinking ten years.</p> <p>9 Q. To your knowledge, did he have 10 access for his entire ten years?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know with whom your office 13 coordinates to obtain OARRS database access?</p> <p>14 A. State Pharmacy Board, I believe.</p> <p>15 Q. And you mentioned that the OARRS 16 data could potentially be helpful to your office 17 because it could show if someone was doctor 18 shopping; is that what you said?</p> <p>19 A. If that was contained in an 20 investigation, yes, that could help.</p> <p>21 Q. To your knowledge, has OARRS helped 22 your office identify and deter drug abuse in 23 your county?</p> <p>24 A. If it has been within investigations 25 that have been brought to us and it was used, it</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Yes. I mentioned that earlier to 2 you.</p> <p>3 Q. What does OARRS stand for?</p> <p>4 A. Starts with Ohio. I don't know the 5 rest of it.</p> <p>6 Q. What is your understanding of what 7 OARRS is?</p> <p>8 A. OARRS is a list that the State 9 Pharmacy Board maintains that has prescribed 10 medications for individuals and the pharmacies 11 that dispense them, and the law enforcement has 12 been able to go through and look and see if -- 13 if people are doctor shopping based on those.</p> <p>14 Q. Does your office have access to the 15 OARRS data?</p> <p>16 A. We have -- our chief investigator 17 had access to that. He is no longer with the 18 office. So right now our -- one of our other 19 investigators, Jesse Lee Masters is, I believe, 20 our office's designee with OARRS.</p> <p>21 Q. When did those individuals first 22 obtain access to the OARRS database?</p> <p>23 A. I do not know when the prior chief 24 investigator obtained access, but Jesse Lee 25 Masters was probably within the last two weeks</p>	<p style="text-align: right;">Page 185</p> <p>1 would have helped.</p> <p>2 I believe in the John Otterman case 3 we had OARRS reports, but at that time they came 4 from Detective Patrick Leonard from the Akron 5 Police Department. We did not have the access 6 to it at the time of that case.</p> <p>7 Q. To your knowledge, do pharmaceutical 8 drug distributors like my client, McKesson, have 9 access to the OARRS database?</p> <p>10 A. I have no idea.</p> <p>11 Q. Are there other types of databases 12 that your office accesses to get data on the 13 number of opioids prescribed in your county?</p> <p>14 MS. HERMIZ: Objection to form.</p> <p>15 A. I don't know.</p> <p>16 Q. According to the complaint, Summit 17 County averaged 36.4 million doses of opioids 18 dispensed per year, with a high of 39.5 million 19 in 2012. Is that number -- are those numbers 20 problematic from your point of view?</p> <p>21 MS. HERMIZ: Objection to form.</p> <p>22 A. You would have to know the context 23 of them; otherwise, I don't have enough 24 information to answer that question.</p> <p>25 Q. Do you know what percentage of the</p>



<p style="text-align: right;">Page 186</p> <p>1 opioids prescribed and consumed in Summit County  2 were legitimately prescribed to the patient?  3 MS. HERMIZ: Objection to form.  4 A. No. My knowledge would be case  5 specific.  6 Q. Do you know how many prescription  7 opioids were consumed in Summit County last  8 year?  9 A. No.  10 Q. And apart from the OARRS database,  11 are you aware of any other efforts to track that  12 information?  13 MS. HERMIZ: Objection to form.  14 A. You would have to ask law  15 enforcement that.  16 Q. Who specifically in law enforcement?  17 A. Akron Police. Summit County  18 Sheriff's Department. Any of the jurisdictions  19 there, their investigators. The State Pharmacy  20 Board. Pharmacies I'm sure would also have that  21 information.  22 Q. Are there names of any individuals  23 with whom you coordinate on these types of  24 issues for your office?  25 A. No. Again, we don't coordinate on</p>	<p style="text-align: right;">Page 188</p> <p>1 diverted from their intended use. Steal them,  2 either use them or resell them. We've seen  3 individuals who legally obtain the drugs to sell  4 them or give them away, either traffic or  5 corrupt others with those drugs.  6 We've seen in nursing homes -- we  7 had a case with a hospice care unit, where one  8 of the nurses was taking drugs that -- pain  9 medication for specific patients, and rather  10 than giving that to those patients who were in  11 terminal states, using those for their own --  12 their own addictions. We've prosecuted those  13 cases, other cases involving nursing homes  14 and -- that -- with similar type issues.  15 Q. In your office's experience, when  16 diversion occurs, does the offender typically  17 obtain the drugs for personal use or for resale?  18 A. Both.  19 Q. And which is more common in your  20 experience?  21 A. I don't think you can say which is  22 more common because they're different types of  23 crimes, and so it's -- we see people stealing  24 the drugs, we see people using them for  25 themselves.</p>
<p style="text-align: right;">Page 187</p> <p>1 that. We take the investigations when they come  2 in to us.  3 Q. Have you heard of the term  4 "diversion" used in connection with prescription  5 opioids?  6 A. From you asking me questions today.  7 Q. So this is different than a criminal  8 diversion, where you might divert someone from a  9 prosecution in favor of treatment. What I'm  10 talking about is a prescription pharmaceutical  11 that is diverted from its legitimate medical  12 purposes.  13 Do you understand that?  14 A. Yes, I do.  15 Q. Okay. Are there different ways that  16 pharmaceuticals, prescription opioids, can be  17 diverted?  18 MS. HERMIZ: Objection to form.  19 A. I'm sure there are.  20 Q. And based on your experience  21 prosecuting cases, what types of diversion of  22 prescription drugs can occur?  23 A. Well, we have seen individuals who  24 steal drugs, steal legal drugs that were  25 prescribed to individuals. So that would be</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. You see both?  2 A. Yes.  3 Q. You see people diverting drugs for  4 their personal use and you see them diverting it  5 to sell?  6 A. Yes.  7 Q. And my question is, which of those  8 do you see more often?  9 A. I've never sat and tried to quantify  10 that.  11 Q. If an individual is reselling, is it  12 common for the pills that have been diverted to  13 pass through multiple hands before reaching the  14 end user?  15 A. That would depend on a particular  16 case.  17 Q. In your experience, based on the  18 cases that you have seen come through the Summit  19 County Prosecutor's Office, is it common for  20 pills that have been diverted to go through  21 multiple hands before they reach the end user?  22 A. I think that's happened on some  23 occasions, but there have been other occasions  24 where, again, the person who steals it is the  25 person who is selling it or distributing it.</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. What kinds of people engage in 2 illicit sales of prescription drugs? 3 MS. HERMIZ: Objection to form. 4 A. Addicts, criminals. In this type 5 of -- opiate related, right here, anyone from 6 any cross-section you want to do in our 7 community can pop up here, again, from high 8 school kids to senior citizens, in wealthier 9 areas, in poorer areas. It doesn't matter. 10 This has hit the county across the board. 11 Q. Do you see street gangs involved in 12 the illicit sales of prescription drugs as well? 13 A. I'm sure there are, and we've 14 charged some of the gangs with drugs, and 15 whether they were specifically prescription -- a 16 lot of times police will make a stop and they'll 17 have prescription drugs without any type of 18 prescription for them. So, again, those may be 19 found on their person. Those may be found in 20 the floorboards of the car. They may just be 21 found in the car. But that's not an unusual 22 thing to occur. 23 Q. And prescription drugs without a 24 valid prescription have been found in cases 25 involving, you said, street gangs. What about</p>	<p style="text-align: right;">Page 192</p> <p>1 cases brought to us by law enforcement, 2 individuals with prescriptions that are 3 prescribed drugs that they do not have 4 prescriptions for. 5 Q. Okay. Has the incidence of opioid 6 diversion changed over time in Summit County? 7 A. The access and notoriety of them has 8 clearly increased. Right now we're going down a 9 little bit again, and I think that's because of 10 our community education and awareness. 11 Q. Does anyone track how much diversion 12 of prescription opioids has occurred in Summit 13 County by year? 14 A. You may want to check with the drug 15 unit or the police departments on that. 16 Q. You're not aware of anyone? 17 A. No. 18 And the opiate -- the opiate task 19 force for the county may also have that. 20 Q. I believe you mentioned this 21 earlier. I just want to make sure I'm clear. 22 If an individual is found in possession of 23 prescription opioids but has a doctor 24 prescription for it, your office would not 25 prosecute that case?</p>
<p style="text-align: right;">Page 191</p> <p>1 in other organized crime? 2 A. Well, any -- individuals being 3 stopped. Again, as far as other organized 4 crime, you would probably need to explain that, 5 what you mean by that. 6 Q. Organized kind of criminal 7 enterprises that are acting in Summit County. 8 A. We did prosecute a criminal 9 enterprise several years ago, where one -- one 10 group was -- were the thieves stealing items 11 from cars, other things like that; the other 12 group were actually meth amphetamine 13 manufacturers, and the head of the enterprise 14 would pay off his thieves with the drugs that 15 were manufactured. So whether or not there were 16 any prescription drugs in that, I don't 17 specifically recall. 18 Q. You recall that case was about meth 19 amphetamine? 20 A. Primarily meth amphetamines, yes. 21 Q. Based on your experience, would you 22 say there's significant opioid diversion in 23 Summit County? 24 MS. HERMIZ: Objection to form. 25 A. I think we frequently see, through</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Not unless there's evidence of a 2 crime. 3 Q. But that in and of itself is not a 4 crime unless there is evidence of doctor 5 shopping or some other crime? 6 A. Right. If you legally possess a 7 prescription for a drug that a doctor has 8 prescribed to you, you're not committing a 9 crime, we're not going to be involved. 10 Q. What about in a situation where a 11 patient is legally prescribed medicine and 12 misuses the medication? In that instance, would 13 your office prosecute the individual? 14 MS. HERMIZ: Objection to form. 15 A. That would depend on the nature of 16 the misuse and how and when law enforcement 17 became involved in it, and what, if any -- any 18 crime we could find in there that would be 19 something for us to prosecute. 20 Q. But misuse of your prescription 21 medicine is not in and of itself a crime in 22 Summit County, correct? 23 MS. HERMIZ: Objection to form. 24 A. Again, you would have to have the 25 specific facts to determine if that is a crime.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. In your experience, are there some 2 times in which people overdose on prescription 3 drugs that were prescribed to them legitimately? 4 A. I don't know that. 5 Q. You're not aware of any cases of 6 accidental overdose from prescription opioids? 7 A. Not that have come to our office. 8 Q. If a person has a legitimate 9 prescription for an opioid but sells the 10 prescription opioids to someone else, is that a 11 crime? 12 A. Yes. 13 Q. And in that scenario, who should be 14 held responsible for the diversion? 15 MS. HERMIZ: Objection to form. 16 A. Well, I'm not going to answer who is 17 going to be responsible for the diversion, but 18 both individuals could be charged with -- with 19 crimes. 20 Q. And by "both individuals," who are 21 you referring to? 22 A. The seller and the buyer. 23 Q. And if someone has a legitimate 24 prescription for an opioid, is it a crime for 25 them to give it away to someone else?</p>	<p style="text-align: right;">Page 196</p> <p>1 A. That would be someone -- a doctor or 2 a clinic that is prescribing pills that are 3 either not needed by that person or we've had 4 some where they do not actually examine the 5 individual, basically just in return for 6 whatever they're paying for that visit are 7 giving them a prescription. Some, even 8 depending on the nature of the doctor's license, 9 may be dispensing the drugs at the site. 10 Q. How can you tell the difference 11 between a pill mill and a legitimate pain clinic 12 or other medical office? 13 MS. HERMIZ: Objection to form. 14 A. The line around the building. 15 Q. Long line. 16 Are there any other indicators? 17 A. There are quite a few other 18 indicators, and those would be case specific and 19 we would look at the investigations there. I 20 know Detective Leonard had brought us one where, 21 again, the line wrapped around the outside of 22 the building and was like that for several days. 23 Q. What was the name of that facility? 24 A. Off the top of my head, I cannot 25 think of that one. It's probably been in the</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yes. 2 Q. And in that scenario, would you 3 consider that both the person who gave it away 4 and the person who received it to have committed 5 a crime? 6 A. Yes, and we could look at that, 7 depending on all of the other facts and 8 circumstances. 9 Q. Is it also a crime to steal opioid 10 pills? 11 A. Yes. 12 Q. Is theft of an opioid ever not a 13 crime? 14 A. If there's justification for it, it 15 may not be a crime. 16 Q. What sort of justification could 17 there be? 18 A. I don't know. 19 Q. Okay. Is it a crime to obtain an 20 opioid prescription from a pill mill when you 21 don't really need it for medical purposes? 22 MS. HERMIZ: Objection to form. 23 A. Yes. 24 Q. What's your understanding of what a 25 pill mill is?</p>	<p style="text-align: right;">Page 197</p> <p>1 last three or four years. 2 Q. Are you aware of other pill mills 3 operating within Summit County over the past 20 4 years? 5 A. Yes. I've had different discussions 6 over the years with Detective Leonard and Tom 7 Misch -- and I apologize. I have no idea how to 8 spell his last name. He was a retired Akron 9 police officer who worked for the Ohio Pharmacy 10 Board. They would frequently come in with cases 11 for us to review. 12 Q. How many pill mills are you aware 13 operated within Summit County over the past 20 14 years? 15 A. I have no idea. I don't have 16 recollection on the number. 17 Q. Is it more than five? 18 A. I'm sure there are more than five, 19 but I, again, don't have recollection of that. 20 You would probably need to talk to Detective 21 Leonard or Mr. Misch. 22 Q. Can you estimate, over your time 23 period at Summit County, how many pill mills 24 operated? 25 A. I don't think I can fairly estimate</p>

<p style="text-align: right;">Page 198</p> <p>1 that, no.</p> <p>2 Q. Is it less than a hundred?</p> <p>3 A. I would think so, but I don't know.</p> <p>4 Q. Is it less than 200?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. How many pill mills did you</p> <p>7 prosecute?</p> <p>8 A. A few. I know that.</p> <p>9 Q. Okay. So you prosecuted a few, but</p> <p>10 you could have been referred 200?</p> <p>11 MS. HERMIZ: Objection to form.</p> <p>12 A. No. That is not what I answered at</p> <p>13 all. You asked how many pill mills were in</p> <p>14 Summit County, not how many investigations were</p> <p>15 presented to us about pill mills in Summit</p> <p>16 County.</p> <p>17 Q. I see. So you were aware that these</p> <p>18 pill mills were operating in your county, but</p> <p>19 they weren't investigated?</p> <p>20 MS. HERMIZ: Objection to form.</p> <p>21 A. I am aware that detectives have said</p> <p>22 there are other ones going on. As far as --</p> <p>23 again, remember, the 200 was your number, it was</p> <p>24 never my number. So there are other</p> <p>25 investigations that are ongoing that they tell</p>	<p style="text-align: right;">Page 200</p> <p>1 A. A few.</p> <p>2 Q. Do you mean less than 50?</p> <p>3 A. Yes.</p> <p>4 Q. Do you mean less than ten?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. I would guess less than ten.</p> <p>7 Q. Were these pill mills well known in</p> <p>8 the community?</p> <p>9 A. Probably depend on what part of the</p> <p>10 community, and I'm sure in some areas of the</p> <p>11 community they were and in other parts of the</p> <p>12 community they were not.</p> <p>13 Q. How did you find out about them?</p> <p>14 A. Detective Pat Leonard or Tom Misch</p> <p>15 from the State Pharmacy Board.</p> <p>16 Q. Were there any other sources apart</p> <p>17 from those two individuals?</p> <p>18 A. There may have been other agents</p> <p>19 from the State Pharmacy Board, but I don't</p> <p>20 recall any specifics.</p> <p>21 Q. Do you recall approximately when</p> <p>22 these pill mills were operating in Summit</p> <p>23 County?</p> <p>24 A. No, I don't.</p> <p>25 Q. Do you know whether any were outside</p>
<p style="text-align: right;">Page 199</p> <p>1 us about, and when they're ready, they bring</p> <p>2 them to us. There are other ones that may --</p> <p>3 some may go federally, some may be handled by</p> <p>4 the medical board, some may be handled by the</p> <p>5 pharmacy board.</p> <p>6 Q. What are the names of the pill mills</p> <p>7 that you were informed were operating in Summit</p> <p>8 County?</p> <p>9 A. Again, I don't know those. Again,</p> <p>10 it's the same thing where I don't know the</p> <p>11 number of them, I don't know the names of them.</p> <p>12 Q. You don't recall any of the names?</p> <p>13 A. No. I believe there was one. It</p> <p>14 was a Dr. Brown.</p> <p>15 Q. And you cannot estimate in any</p> <p>16 fashion how many pill mills were operating in</p> <p>17 Summit County according to the law enforcement</p> <p>18 officers you worked with?</p> <p>19 A. No. You would have to talk to them.</p> <p>20 Q. To the best of your recollection,</p> <p>21 your office has prosecuted a few pill mills?</p> <p>22 A. Yes.</p> <p>23 Q. When you say "a few," how many do</p> <p>24 you mean?</p> <p>25 MS. HERMIZ: Objection to form.</p>	<p style="text-align: right;">Page 201</p> <p>1 Cleveland?</p> <p>2 A. I don't pay attention to ones in</p> <p>3 Cleveland.</p> <p>4 Q. Sorry. I meant Akron.</p> <p>5 A. Okay.</p> <p>6 Q. Do you recall if any were outside</p> <p>7 Akron?</p> <p>8 A. I believe -- and I don't know for</p> <p>9 sure, but I'm thinking one of them may have been</p> <p>10 in Copley or the name of it may have been</p> <p>11 something in Copley. I don't know.</p> <p>12 Q. And what was your understanding</p> <p>13 about who was operating these pill mills?</p> <p>14 A. Physician or a physicians group.</p> <p>15 Q. Who has the ability to stop a pill</p> <p>16 mill from operating in Summit County?</p> <p>17 A. I would think, under certain</p> <p>18 circumstances, law enforcement may have that</p> <p>19 ability. I believe the State Pharmacy Board</p> <p>20 would have that, the State Medical Board would</p> <p>21 have that authority.</p> <p>22 Q. Would your office have the ability</p> <p>23 to stop a pill mill from operating in Summit</p> <p>24 County?</p> <p>25 MS. HERMIZ: Objection to form.</p>

<p style="text-align: right;">Page 202</p> <p>1 A. It would depend on the 2 circumstances. 3 Q. In the prosecutions related to pill 4 mills you spoke of, less than ten of them, how 5 were those cases resolved? 6 MS. HERMIZ: Objection to form. 7 A. I believe with a guilty plea. 8 Q. Do you recall any trials involving 9 prosecution of a pill mill? 10 A. No. 11 Q. Do you recall any pill mills that 12 you wanted to prosecute but did not prosecute? 13 MS. HERMIZ: Objection to form. 14 A. As to any specific names, no. As to 15 discussions with Detective Leonard or Tom Misch, 16 I believe there may have been preliminarily some 17 different ones they came in to talk about, and 18 then, for whatever reason, did not return on. 19 Q. What was your understanding of the 20 State Medical Board's authority to regulate or 21 investigate or prosecute operators of a pill 22 mill? 23 A. Whatever their authority is granting 24 the doctor their license. 25 Q. What did you understand the Board of</p>	<p style="text-align: right;">Page 204</p> <p>1 A. As to other than what we've already 2 talked about? 3 Q. Yes. 4 A. No. 5 Q. Are you aware of any efforts by 6 county officials to try to get the medical board 7 to revoke or suspend a doctor's license? 8 A. Firsthand knowledge, no, I don't 9 have any. 10 Q. Are you aware of any efforts by 11 county officials to try to get the Board of 12 Pharmacy to shut down pill mills? 13 A. Again, I have no firsthand knowledge 14 of that. 15 Q. What knowledge do you have? 16 A. I know there have been issues at 17 times where either county council members or 18 city council members have gone to law 19 enforcement about problems or issues, and those 20 have resulted in meetings with Detective Leonard 21 or the State Pharmacy Board. As to any 22 specifics of those, I don't have that 23 information. 24 Q. Is it your understanding that those 25 county officials were seeking action from the</p>
<p style="text-align: right;">Page 203</p> <p>1 Pharmacy's authority to be with respect to pill 2 mills? 3 A. Again, relating to the doctor's 4 ability to prescribe drugs, again, the type and 5 nature of the drugs, and, again, different 6 certifications and approvals they need. 7 Q. What did you understand the Drug 8 Enforcement Administration's authority to 9 regulate, investigate or prosecute pill mills? 10 A. I don't think I talked about that at 11 all. 12 Q. So I'm asking you to now. Do you 13 understand that the DEA had any authority to 14 regulate or investigate pill mills? 15 MS. HERMIZ: Objection to form. 16 A. I have never had a discussion with 17 the DEA about their authority. 18 Q. So you don't know one way or the 19 other if they have any authority? 20 A. That would be something you would 21 need to talk to a federal prosecutor on. 22 Q. Are there other agencies or entities 23 you're aware of who have the authority to 24 regulate, investigate or prosecute operators of 25 pill mills?</p>	<p style="text-align: right;">Page 205</p> <p>1 medical board or the board of pharmacy in those 2 situations? 3 MS. HERMIZ: Objection to form. 4 A. I do not know what they were asking 5 for. 6 Q. Leaving aside whether they're pill 7 mills or not, has your office ever investigated 8 any pain clinics for improper prescriptions? 9 A. We have worked with law enforcement 10 who have investigated pain clinics for improper 11 prescriptions. 12 Q. And have you ever prosecuted any 13 pain clinics for improper prescribing? 14 A. I believe we have. 15 Q. How many? 16 A. Again, a few. 17 Q. Less than ten? 18 A. As best I can state, yes. 19 Q. Over what period of time did these 20 prosecutions occur? 21 A. Somewhere from when I began in the 22 office until the present day. 23 Q. Do you have an estimate of the 24 number of doses distributed by pill mills to 25 people in your jurisdiction last year?</p>



<p style="text-align: right;">Page 206</p> <p>1 A. No.</p> <p>2 Q. At some point did the legislature in</p> <p>3 Ohio enact legislation that helped to deal with</p> <p>4 the pill mill problem?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. I don't know specifically what</p> <p>7 legislation.</p> <p>8 Q. Is it a crime for a street dealer or</p> <p>9 anyone else who isn't a DEA-registered pharmacy</p> <p>10 to sell prescription opioids?</p> <p>11 A. I'm sure it is.</p> <p>12 Q. Have you prosecuted any such cases?</p> <p>13 A. If the cases have been presented to</p> <p>14 us, we have prosecuted them.</p> <p>15 Q. Do you know whether any cases have</p> <p>16 been presented to you that your office would</p> <p>17 have prosecuted?</p> <p>18 A. We have prosecuted individuals for</p> <p>19 having legal drugs illegally, yes.</p> <p>20 Q. How many cases have you prosecuted</p> <p>21 in which an individual was unlawfully selling</p> <p>22 prescription opioids?</p> <p>23 A. Personally, I prosecuted one. I</p> <p>24 don't know what the rest of the prosecutors in</p> <p>25 the office would have done.</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Is it a crime for a doctor to write</p> <p>2 a prescription for an opioid knowing that it's</p> <p>3 not for a legitimate medical purpose?</p> <p>4 A. Yes.</p> <p>5 Q. Have there been occasions in which</p> <p>6 your office had reason to believe that certain</p> <p>7 specific doctors had written prescription --</p> <p>8 opioid prescriptions without a legitimate</p> <p>9 medical purpose?</p> <p>10 A. I believe we've had discussions with</p> <p>11 Detective Leonard and the State Pharmacy Board</p> <p>12 on some of those and I think cases have been</p> <p>13 referred and prosecuted based upon that. The</p> <p>14 specifics of the cases I don't have.</p> <p>15 Q. How many cases have been prosecuted</p> <p>16 against doctors for prescription opioids?</p> <p>17 A. A few. Under ten.</p> <p>18 Q. Which specific doctors were</p> <p>19 investigated by your office -- excuse me, were</p> <p>20 prosecuted by your office?</p> <p>21 A. I do not have that information.</p> <p>22 Q. For each case, which specific</p> <p>23 prescription opioids were involved?</p> <p>24 A. Again, I don't have that</p> <p>25 information.</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. Do you have any knowledge of any</p> <p>2 prosecutions for the sale of prescription</p> <p>3 opioids apart from the one prosecution you did?</p> <p>4 Do you have any knowledge of any other ones in</p> <p>5 your office?</p> <p>6 A. I am not aware of those cases.</p> <p>7 That's not saying there aren't cases there.</p> <p>8 Q. Is it a crime to forge a</p> <p>9 prescription for a controlled substance?</p> <p>10 A. Yes.</p> <p>11 Q. In that scenario, who would be</p> <p>12 responsible for the diversion of the</p> <p>13 pharmaceutical?</p> <p>14 MS. HERMIZ: Objection to form.</p> <p>15 A. In what situation?</p> <p>16 Q. In a situation in which an</p> <p>17 individual forged a prescription in order to get</p> <p>18 a controlled substance.</p> <p>19 A. Several people could be responsible.</p> <p>20 Q. Who could be responsible?</p> <p>21 A. The person who forged the</p> <p>22 prescription, the person who possessed the</p> <p>23 prescription. Again, it -- it would call on the</p> <p>24 specific facts and circumstances relating to</p> <p>25 that prescription, the use of it.</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Who would have that information?</p> <p>2 A. The case file would have that, the</p> <p>3 investigators would have that, and the attorneys</p> <p>4 who defended the individuals would have that.</p> <p>5 Q. But how would we know which case</p> <p>6 file to look at if we don't know the doctor's</p> <p>7 name, the time frame or anything else?</p> <p>8 A. You would need to go case by case</p> <p>9 through the 4,000 cases we do each year.</p> <p>10 Q. For each of the doctor cases that</p> <p>11 your office prosecuted, were any pharmacies</p> <p>12 involved?</p> <p>13 A. If prescriptions were filled by a</p> <p>14 pharmacy, a pharmacy would have been involved.</p> <p>15 Q. To your knowledge, were any</p> <p>16 pharmacies charged in those cases?</p> <p>17 A. I know we had a case where we were</p> <p>18 looking at some pharmacist for filling</p> <p>19 prescriptions that were -- were not legitimate.</p> <p>20 I mean, I know once that I even -- I drove up to</p> <p>21 Geneva, Ohio to meet with a pharmacist who had</p> <p>22 originally been in Akron on a case. I do not</p> <p>23 remember the details of it. So that would be,</p> <p>24 again, something the State Pharmacy Board would</p> <p>25 know the details of cases they referred to us</p>

<p style="text-align: right;">Page 210</p> <p>1 regarding pharmacies or pharmacists.</p> <p>2 Q. Who has the ability to stop a doctor</p> <p>3 who's writing an improper prescription?</p> <p>4 MS. HERMIZ: Objection to form.</p> <p>5 A. I'm sure a lot of people do.</p> <p>6 Q. Who?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 Q. Or what entity?</p> <p>9 A. I think the same ones as I've</p> <p>10 answered previously. Again, as to</p> <p>11 prescriptions, the State Medical Board would</p> <p>12 have ability there, the State Pharmacy Board</p> <p>13 would have that. Again, law enforcement. If we</p> <p>14 filed criminal charges, the courts can order the</p> <p>15 person to stop. And they could do that of their</p> <p>16 own free will, too.</p> <p>17 Q. Has your office ever investigated a</p> <p>18 physician or healthcare provider for signing</p> <p>19 blank prescriptions?</p> <p>20 A. Yes. Dr. Johnson. I believe it was</p> <p>21 a -- it was birth control pills. He had offices</p> <p>22 in Akron and also in Columbus, Ohio.</p> <p>23 Q. How many total cases involving</p> <p>24 physicians or healthcare providers has your</p> <p>25 office prosecuted for opioid-related wrongdoing</p>	<p style="text-align: right;">Page 212</p> <p>1 resolution?</p> <p>2 A. Again, provided there have been</p> <p>3 those cases, our caseload, probably on the short</p> <p>4 end, are anywhere from three months, to the</p> <p>5 long, two years, in our general cases, so it</p> <p>6 would fit within that same time frame.</p> <p>7 Q. Between three months and two years?</p> <p>8 A. Yes.</p> <p>9 Q. And during that time frame from</p> <p>10 between three months up to two years, are there</p> <p>11 any restrictions on the defendant doctor's</p> <p>12 ability to continue writing prescription --</p> <p>13 opioid prescriptions?</p> <p>14 A. Presuming there were those cases</p> <p>15 charged, that normally would not be something</p> <p>16 that the county prosecutor has the authority to</p> <p>17 do. It could be a pretrial order issued by the</p> <p>18 judge or it could be a pretrial matter decided</p> <p>19 by the medical board or the pharmacy board. You</p> <p>20 would have to ask them.</p> <p>21 Q. So even if your office doesn't have</p> <p>22 the authority to suspend or revoke a doctor's</p> <p>23 license, you certainly have the authority to</p> <p>24 request that from the judge, right?</p> <p>25 MS. HERMIZ: Objection to form.</p>
<p style="text-align: right;">Page 211</p> <p>1 since you joined the office?</p> <p>2 A. I do not know that.</p> <p>3 Q. Is that information tracked?</p> <p>4 A. No.</p> <p>5 Q. How many total physicians has your</p> <p>6 office investigated since 2005?</p> <p>7 MS. HERMIZ: Objection to form.</p> <p>8 A. Again, as investigated, you would</p> <p>9 need to look to the investigators who have</p> <p>10 brought those files to us. We do not do the</p> <p>11 investigations.</p> <p>12 Q. In the cases in which you have</p> <p>13 prosecuted a doctor for overprescribing opioids,</p> <p>14 does your office typically work or contact the</p> <p>15 Ohio Medical Board?</p> <p>16 A. Presuming we had those cases, we do.</p> <p>17 We're required on the conviction of any</p> <p>18 physician to notify the medical board of those</p> <p>19 convictions. There is a form within the Ohio</p> <p>20 Revised Code that's required to be submitted</p> <p>21 that would be maintained by the State Medical</p> <p>22 Board.</p> <p>23 Q. How long does a typical criminal</p> <p>24 case of this sort, that is a doctor</p> <p>25 overprescribing opioids, take from indictment to</p>	<p style="text-align: right;">Page 213</p> <p>1 A. We have the authority to request</p> <p>2 anything from a judge. Whether they give it or</p> <p>3 not is their discretion.</p> <p>4 Q. I know we've been speaking in</p> <p>5 hypotheticals. Is it your testimony -- I just</p> <p>6 want to make sure I'm clear. Is it your</p> <p>7 testimony that your office has prosecuted at</p> <p>8 least some doctors for crimes related to</p> <p>9 prescription opioids?</p> <p>10 A. I do not know prescription opioids.</p> <p>11 Prescription drugs, yes.</p> <p>12 Q. Okay. So you're not certain,</p> <p>13 sitting here today, if there has even been one</p> <p>14 prosecution of a doctor for crimes related to</p> <p>15 prescription opioids specifically?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Thank you.</p> <p>18 In the cases involving doctors who</p> <p>19 committed crimes related to prescription drugs</p> <p>20 generally, has the medical board been a helpful</p> <p>21 partner to your office?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. You would probably need to speak to</p> <p>24 the prosecutor -- specifically to the prosecutor</p> <p>25 that handled those cases. I have not talked to</p>

<p style="text-align: right;">Page 214</p> <p>1 the medical board on any case that I have -- I 2 have handled. 3 Q. Are you aware of discontent among 4 your prosecutors regarding the medical board's 5 partnership on cases that involve doctors? 6 MS. HERMIZ: Objection to form. 7 A. No. But if you want to show me 8 something, I'd be happy to look at it. 9 Q. I'm just asking if in your role as a 10 supervisor in the office, are you aware of any 11 conversations or other experiences that lead you 12 to believe that the Ohio Medical Board is not a 13 helpful partner in the prosecution of doctors? 14 MS. HERMIZ: Same objection. 15 A. I know we had a doctor we prosecuted 16 based on sex acts he was performing on his 17 patients and I know the prosecutors were not 18 happy that the State Medical Board did not 19 intervene and they said they were waiting to see 20 the outcome of the case. That would be the 21 extent of what I know. 22 Q. And in that case the medical board 23 did not revoke or even suspend that doctor's 24 license until the criminal case was resolved; is 25 that right?</p>	<p style="text-align: right;">Page 216</p> <p>1 A. Vaguely, yes. 2 Q. Was your office involved in the 3 prosecution of Dr. Kara? 4 A. Yes. 5 Q. And was Dr. Kara prosecuted for 6 prescription drug trafficking? 7 A. That was a more recent one. I don't 8 know the details of what he was charged with. I 9 just remember he was charged and there was an 10 issue that the State Pharmacy Board the day of 11 the Grand Jury presentation issued a press 12 release announcing he was indicted before we 13 even had a vote from our Grand Jury, and we were 14 concerned about that, and we spoke to the State 15 Pharmacy Board about that. I actually spoke to 16 the person who sent out the press release. 17 Q. What did you say to that person? 18 A. That, under Ohio law, you cannot 19 reveal the vote of a Grand Jury prior to the 20 vote being filed with the court. 21 Q. And after Dr. Kara was indicted, are 22 you aware that his medical license was 23 continued -- excuse me. What is your 24 understanding of what steps, if any, the medical 25 board took regarding Dr. Kara's license after he</p>
<p style="text-align: right;">Page 215</p> <p>1 A. I believe so. 2 Q. What was the name of that doctor? 3 A. Dr. Bressi. 4 Q. Why was that a concern raised by 5 your prosecutors? 6 MS. HERMIZ: Objection to form. 7 A. Well, doctors having sex with their 8 patients when their patients aren't aware of it 9 would -- that should explain it. 10 Q. Was the concern that this particular 11 doctor was permitted to freely continue to 12 practice medicine despite the evidence of 13 criminal wrongdoing? 14 A. No. The concern was he was going to 15 continue his criminal activity on other people. 16 Q. And that he would be able to 17 continue that criminal activity because he still 18 had the benefit of an active medical license, 19 correct? 20 A. If that was the case, yes. 21 Q. Okay. Are you familiar with a 22 case -- another case involving a doctor, 23 Dr. Mahmud Kara? 24 A. Dr. Kara, I believe, yes. 25 Q. And was your --</p>	<p style="text-align: right;">Page 217</p> <p>1 was indicted? 2 A. I am not aware of that. 3 Q. And that case did not involve 4 prescription opioids, right? 5 A. I don't know. Again, I don't have 6 the details of what his charges were. I just 7 know my concern was when it was publicly 8 announced he was indicted prior to the 9 indictment is where I became involved. 10 Q. And when you're prosecuting a 11 doctor, is it your office's practice to share 12 information or evidence with the medical board? 13 A. Depending upon what we have, whether 14 it's an ongoing investigation and that, we are 15 very careful in our investigations not to give 16 out information that is not public record. And, 17 again, there may be some limits, restrictions on 18 what we can give. You're going to have to look 19 at each case and each -- the facts case 20 specific. 21 Q. After indictment, when the 22 investigation is no longer ongoing, what efforts 23 does your office make to share information or 24 evidence with the medical board regarding the -- 25 A. It's not after indictment. It's</p>

<p style="text-align: right;">Page 218</p> <p>1 after the case is resolved.</p> <p>2 Q. So you don't share any information</p> <p>3 or evidence prior to case resolution?</p> <p>4 A. No. That's not what I said.</p> <p>5 Q. Okay. Help me understand.</p> <p>6 A. What I said is we're going to have</p> <p>7 to look at each case, each report, going to go</p> <p>8 fact specific on them on what can and cannot be</p> <p>9 given at that time.</p> <p>10 Q. And you make that determination even</p> <p>11 after someone has been indicted?</p> <p>12 A. Yes. It's going to be ongoing with</p> <p>13 that, and we try to have a good working</p> <p>14 relationship with all agencies that are</p> <p>15 involved. So if it's something we can share</p> <p>16 with them, we will do that. If it's something</p> <p>17 we cannot, at the appropriate time we will then</p> <p>18 share it.</p> <p>19 Q. And certainly your office is</p> <p>20 motivated to share evidence with the medical</p> <p>21 board in situations where you're aware that a</p> <p>22 doctor is continuing ongoing criminal activity,</p> <p>23 correct?</p> <p>24 A. Again, within the provisions of the</p> <p>25 law, that we are permitted to disclose, we are</p>	<p style="text-align: right;">Page 220</p> <p>1 amount of evidence to meet your criminal burden</p> <p>2 of proof. But my question is, short of that,</p> <p>3 even for those cases where you cannot establish</p> <p>4 enough evidence to bring a criminal case -- my</p> <p>5 question is, what other doctors do you suspect,</p> <p>6 although you cannot charge, of criminal</p> <p>7 wrongdoing in Summit County?</p> <p>8 MS. HERMIZ: Objection to form.</p> <p>9 A. I don't know.</p> <p>10 Q. Do you recall any instances in which</p> <p>11 law enforcement has informed you about</p> <p>12 suspicious activity of a doctor and your office</p> <p>13 has not prosecuted that doctor?</p> <p>14 A. Suspicious activity that they are</p> <p>15 doing an ongoing investigation on and they would</p> <p>16 come back at a later date and have not come</p> <p>17 back, yes, that's happened. Details of names</p> <p>18 and doctors I don't have.</p> <p>19 Q. Why hasn't your office prosecuted</p> <p>20 more doctors for improperly prescribing opioids</p> <p>21 in Summit County?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. I think, as we discussed previously,</p> <p>24 we do not investigate, so if the investigations</p> <p>25 are brought to us, again, issues with manpower</p>
<p style="text-align: right;">Page 219</p> <p>1 going to do that. Where we're not, we're going</p> <p>2 to not give that until we are permitted to.</p> <p>3 Q. Have you ever filed a motion for an</p> <p>4 injunction to suspend a doctor's ability to</p> <p>5 prescribe medication due to suspected criminal</p> <p>6 activity?</p> <p>7 A. I'm not aware if we have done that</p> <p>8 or not.</p> <p>9 Q. Apart from the doctors that you've</p> <p>10 decided to prosecute, how many other doctors,</p> <p>11 based on your conversations with law</p> <p>12 enforcement, do you suspect of criminal activity</p> <p>13 in Summit County?</p> <p>14 MS. HERMIZ: Objection to form.</p> <p>15 A. I don't suspect them of criminal</p> <p>16 activity in Summit County or we would charge</p> <p>17 them.</p> <p>18 Q. So, in your view, you have</p> <p>19 charged --</p> <p>20 A. Again, we talked earlier on about</p> <p>21 the National Prosecution Standards. If we have</p> <p>22 sufficient evidence to proceed with charges, we</p> <p>23 would do that.</p> <p>24 Q. So my question is different, and I</p> <p>25 understand in a criminal case you need a certain</p>	<p style="text-align: right;">Page 221</p> <p>1 and resources across the board with our</p> <p>2 community, with our law enforcement, be that</p> <p>3 again, local departments, sheriff's departments,</p> <p>4 again, any other issues there, if it's a case</p> <p>5 that is not brought to us and we do not have an</p> <p>6 investigation, we can't proceed with it. And</p> <p>7 there are a lot of times, again, you look in</p> <p>8 opiate-related cases and see individuals who are</p> <p>9 taking drugs, and you see in another case</p> <p>10 someone who is out with a deadly weapon,</p> <p>11 shooting that, police are going to prioritize</p> <p>12 what they need to do to protect the community,</p> <p>13 and if they don't have the resources to hit</p> <p>14 everything, again, the violent crime is going to</p> <p>15 always come first.</p> <p>16 Q. Are you aware of any pharmacist in</p> <p>17 Summit County who sold opioids to people</p> <p>18 improperly?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. Off the top of my head, no.</p> <p>21 Q. Prior to this litigation did your</p> <p>22 office ever communicate with the DEA concerning</p> <p>23 any suspicions of pharmacists or doctors</p> <p>24 regarding prescription opioids?</p> <p>25 A. With the DEA, not that I'm aware of.</p>



<p style="text-align: right;">Page 222</p> <p>1 Q. Did your office ever communicate 2 with the Ohio Board of Pharmacy about 3 pharmacists dispensing opioids in ways that you 4 thought were problematic? 5 A. Based upon investigations they 6 brought to us or law enforcement brought to us, 7 there may have been such communications. 8 Q. Has the Ohio Board of Pharmacy 9 brought investigations to you of -- involving 10 pharmacists suspected of wrongdoing regarding 11 opioid prescriptions? 12 A. As to specifics, I don't recall. 13 They may have. 14 Q. How many pharmacists has your office 15 prosecuted since 2005? 16 A. I do not know. 17 Q. Is it possible the number is zero? 18 A. It's possible. 19 Q. When your office comes across an 20 addict or an overdose victim who was taking 21 prescription opioids, what steps does it take to 22 warn doctors or pharmacists about that 23 individual? 24 MS. HERMIZ: Objection to form. 25 A. Is this someone who has died?</p>	<p style="text-align: right;">Page 224</p> <p>1 doctor, that would have already been done by law 2 enforcement in the investigation, so that doctor 3 would be a witness in our case, so yes, there 4 would be communication with the doctor. 5 Q. And how about the pharmacists? 6 A. If that pharmacist would be a 7 witness in the case, yes, there would be 8 communication. 9 Q. But, otherwise, you wouldn't reach 10 out to them to discuss the individual? 11 A. Not in the prosecution of that 12 individual for illegally possessing those drugs. 13 Q. How many cases of prescription 14 forgery has your office prosecuted regarding 15 opioids? 16 A. I can't give you a number on that. 17 There have been times where individuals have 18 been charged with forgery relating to the 19 prescription forms. I can tell you that has 20 happened. But to quantify that, again, I don't 21 have that information. 22 Q. Would you say it's more than -- more 23 than ten cases? 24 A. I can't say ten or more or ten or 25 less. I can just say it's happened.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. No. 2 A. Again, if it's a case that -- 3 someone who has an overdose where it would 4 actually come to us, that is different. I 5 believe the majority of them don't make it to us 6 if someone just overdoses. 7 Q. If your office were to come across 8 an individual who had been doctor shopping and 9 illegally taking prescription opioids -- 10 A. I think you're putting the cart 11 before the horse a little bit. If law 12 enforcement comes to us and says this person is 13 doctor shopping and there's an overdose there, 14 we would then notify -- and police would notify 15 that -- that doctor or that pharmacy. 16 Q. Would the doctors and pharmacists be 17 notified by police even if that individual had 18 not overdosed? 19 A. You would have to ask the law 20 enforcement that. 21 Q. Does your office make efforts to 22 notify doctors or pharmacists when it comes into 23 contact with individuals illegally using or 24 selling prescription opioids? 25 A. If they are traceable back to that</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. How prevalent has the theft of 2 prescription opioids been in your jurisdiction? 3 MS. HERMIZ: Objection to form. 4 A. Again, you would have to look at law 5 enforcement for that number. Again, the report 6 of theft versus the criminal charging of theft 7 are completely different numbers and we wouldn't 8 have the report of theft. 9 Q. How many cases have you prosecuted 10 involving the theft of prescription opioids? 11 A. I do not have that number. You 12 would have to go through and go case by case 13 through the files to determine that. 14 Q. Could it be zero? 15 A. No. 16 Q. Could it be more than a hundred? 17 MS. HERMIZ: Objection to form. 18 A. It could be more. It could be less. 19 Q. Has your office prosecuted the sale 20 of counterfeit pills? 21 A. Yes. 22 Q. How many such cases? 23 A. I cannot quantify that, whether it's 24 more or less than a hundred. 25 Q. Has your office ever prosecuted any</p>



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1 pharmaceutical distributors who deliver  
2 prescription medicine to pharmacies?  
3 A. Not that I'm aware of.  
4 Q. Have you ever considered prosecuting  
5 those entities?  
6 A. If we're brought the case, the  
7 investigation, we will consider that, yes.  
8 Q. Have you ever been brought such a  
9 case by law enforcement?  
10 A. Not that I'm aware of.  
11 Q. Have internet sales been a problem  
12 for diversion of prescription opioids in Summit  
13 County?  
14 A. Not that we've received from law  
15 enforcement; however, we are hearing more and  
16 more frequently about the access to drugs from  
17 China.  
18 Q. What specific drugs are coming from  
19 China?  
20 MS. HERMIZ: Objection to form.  
21 A. Basically, any drug, it's my  
22 understanding.  
23 Q. Are you aware of reports that  
24 fentanyl and carfentanil are coming from  
25 China -- coming into Summit County from China?

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1 A. As into Summit County, no. As to  
2 into the United States, yes.  
3 Q. Do you believe the opioid abuse  
4 problem in Summit County has a single cause or  
5 multiple causes?  
6 A. Multiple causes.  
7 Q. What are the causes?  
8 MS. HERMIZ: Objection to form.  
9 A. My opinion initially would be drugs,  
10 and the normal drugs, illegal drugs.  
11 Individuals, again, as we talked  
12 earlier, this is -- unlike our normal criminal  
13 trafficking in cocaine or crack cocaine, from  
14 going years back, this is something that's gone  
15 across the county from all age levels, all  
16 economic levels. This is something where we  
17 see, again, people who -- in the article you  
18 gave me, people that can't afford their  
19 OxyContin anymore, that are forced to buy  
20 cheaper heroin and end up getting themselves  
21 further hooked. Those are all things.  
22 Again, the ease and access to this,  
23 or to the drugs, the doctor shopping to the  
24 drugs. The people putting -- mixing these and  
25 cutting these drugs with other illegal

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1 substances.  
2 Again, all of those are factors into  
3 this that, again, looking at the root, it looks  
4 like the -- we're hearing a lot in all of this  
5 that the addiction is the start of it. And I  
6 know the cautions my doctor has -- like when I  
7 had shoulder surgery, be careful in how you use  
8 this. Again, those are -- those are all  
9 factors.  
10 Q. Are you referring to the warning  
11 that you received after -- before you took a  
12 prescription drug after shoulder surgery?  
13 A. No. The face-to-face from my  
14 doctor.  
15 Q. And he warned you about the  
16 prescription drug before you took it?  
17 A. Yes.  
18 Q. What kind of drug did you have a  
19 personal experience taking?  
20 A. Oh, one of the generic names for  
21 OxyContin, I believe.  
22 Q. And have your personal experiences  
23 with opioids affected your beliefs or your  
24 opinions about them?  
25 MS. HERMIZ: Objection to form.

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1 A. I think they solidified my opinions  
2 about them.  
3 Q. Are you aware that opioids may only  
4 be prescribed by a medically licensed doctor?  
5 A. Legally, yes.  
6 Q. And may only be dispensed by a  
7 DEA-registered pharmacy?  
8 A. Legally, yes.  
9 Q. Are you aware that opioids carry  
10 with them a warning that had been approved by  
11 the FDA?  
12 MS. HERMIZ: Objection to form.  
13 A. Those from pharmacies, yes. Those  
14 on the street, no.  
15 Q. And the ones on the street are  
16 manufactured by criminals, correct?  
17 MS. HERMIZ: Objection to form.  
18 A. I think the ones on the street we've  
19 seen are manufactured by -- some by criminals,  
20 some by people overseas, and some by the same  
21 people that sell them to my pharmacy.  
22 Q. Would you agree that doctors  
23 unlawfully prescribing opiates for no medical  
24 purpose is one cause of the opioid abuse problem  
25 in Summit County?

<p style="text-align: right;">Page 230</p> <p>1 A. I'm sure it could be.</p> <p>2 Q. So you said it could be. But do you</p> <p>3 agree that it is one of the causes based on what</p> <p>4 you had seen?</p> <p>5 A. From what I've seen, my personal</p> <p>6 opinion, yes.</p> <p>7 Q. Do you believe that pharmacists</p> <p>8 unlawfully dispensing opiates is one cause of</p> <p>9 the opioid problem in Summit County?</p> <p>10 A. Yes. As I said, there are many</p> <p>11 causes.</p> <p>12 Q. And are international drug cartels</p> <p>13 another cause?</p> <p>14 A. I don't know about cartels, but</p> <p>15 whoever is manufacturing it and selling it on</p> <p>16 the internet would be.</p> <p>17 Q. And, of course, the people who</p> <p>18 obtain prescription opioids and sell them are</p> <p>19 one cause of the opioid problems you've seen in</p> <p>20 Summit County, correct?</p> <p>21 A. Part of the many causes, yes.</p> <p>22 Q. As are the individuals who doctor</p> <p>23 shop, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the individuals who forge</p>	<p style="text-align: right;">Page 232</p> <p>1 they don't have a prescription, what, if</p> <p>2 anything, is done to find out where the person</p> <p>3 got the pills?</p> <p>4 A. Well, police can do all types of</p> <p>5 things; however, they have to do that within the</p> <p>6 confines of the constitution and that</p> <p>7 individual's right against self-incrimination,</p> <p>8 so it -- that, I guess, is up to your -- your</p> <p>9 defendant who is illegally possessing the drugs.</p> <p>10 Q. Do you encourage law enforcement to</p> <p>11 seek to gather information regarding the source</p> <p>12 of the drugs they encounter?</p> <p>13 MS. HERMIZ: Objection to form.</p> <p>14 A. Yes, and they are very good at doing</p> <p>15 that.</p> <p>16 Q. And if they were able to determine</p> <p>17 the source of the prescription opioid, do they</p> <p>18 then try to find out -- scratch that.</p> <p>19 There are other sources to assist</p> <p>20 law enforcement in determining the source of</p> <p>21 drugs apart from the defendant, correct?</p> <p>22 MS. HERMIZ: Objection to form.</p> <p>23 A. As to who?</p> <p>24 Q. In other words, a police officer</p> <p>25 doesn't need to obtain a confession from the</p>
<p style="text-align: right;">Page 231</p> <p>1 prescriptions, right?</p> <p>2 A. One of many.</p> <p>3 Q. And the individuals who commit a</p> <p>4 crime by giving their opioid prescription to</p> <p>5 other people or selling it to other people,</p> <p>6 correct?</p> <p>7 A. One of many.</p> <p>8 Q. In your opinion, are insurers or</p> <p>9 Medicaid one cause of the opioid abuse problem</p> <p>10 in Summit County because they encourage doctors</p> <p>11 to prescribe opioids over alternative</p> <p>12 treatments?</p> <p>13 MS. HERMIZ: Objection to form.</p> <p>14 A. I don't have information to answer</p> <p>15 that one.</p> <p>16 Q. If you were to rate the three most</p> <p>17 significant causes of the opioid abuse problem</p> <p>18 in your county, what would you identify?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. The addictions is number one; the</p> <p>21 access, whether legal or illegal, to the drugs</p> <p>22 would be two, and the lack of treatment would be</p> <p>23 three.</p> <p>24 Q. If the police arrest someone and</p> <p>25 find that they have a stash of pills for which</p>	<p style="text-align: right;">Page 233</p> <p>1 defendant in a statement about where the drugs</p> <p>2 came from in all cases, correct?</p> <p>3 A. But if your quest is to look to see</p> <p>4 where the drugs came from, that is your best</p> <p>5 opportunity to get that is through the person</p> <p>6 who is possessing them.</p> <p>7 Q. And another opportunity is to</p> <p>8 investigate the crime scene, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Because you might find a</p> <p>11 prescription bottle that lists a particular</p> <p>12 doctor's name on it, correct?</p> <p>13 A. Depends on your crime scene, yes.</p> <p>14 Q. Is this something that the law</p> <p>15 enforcement agents in Summit County attempt to</p> <p>16 do in each drug case they encounter?</p> <p>17 MS. HERMIZ: Objection to form.</p> <p>18 A. Yes. I think our law enforcement</p> <p>19 are very thorough and very good in finding all</p> <p>20 the evidence they can in their investigations.</p> <p>21 Q. Why is it important to determine the</p> <p>22 source of the drugs for law enforcement</p> <p>23 purposes?</p> <p>24 A. Again, law enforcement looks up the</p> <p>25 chain. We have the person who is using it, so</p>

<p style="text-align: right;">Page 234</p> <p>1 again, we want to see where did this start from,  2 who is responsible in the beginning for this.  3 So if we can do that again, we're going to try  4 to do that. Again, the idea is to make the  5 community and keep the community safe.  6 Q. What incentives can you offer to  7 encourage a drug defendant to cooperate and to  8 inform the government about the source of the  9 drugs at issue?  10 A. Part of that is -- is the province  11 of the court, not our province. Our area is --  12 a lot of times is individuals not being charged  13 could be an incentive to them. Again, it  14 depends on that person. And there's some people  15 who look in crime and say there's a cost of  16 doing business, so they expect to be arrested so  17 often, and there's nothing you're going to do to  18 get them to move to give you any information.  19 There are other people that are going to look to  20 time in jail or no time in jail, other people  21 that may truly want treatment and will benefit  22 by that. There -- I mean, that's something that  23 I don't think you can just give a short answer  24 to. Again, you'd need to know specifics about  25 that person, about their situation, before you</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. In what percentage of the time are  2 you able to get the person who is using drugs to  3 tell you where they obtained the drugs?  4 A. I don't have that answer.  5 Q. Is there any data or statistics  6 you're aware of that would answer that question?  7 A. No.  8 Q. Are you aware of any case your  9 office handled in which prescription opioids  10 were traced back to any of the Defendants in  11 this litigation?  12 A. I don't even, off the top of my  13 head, know the Defendants in this litigation.  14 Q. Are you aware of any case handled by  15 your office in which prescription opioids were  16 traced back to any pharmacy?  17 A. Off the top of my head, I do not  18 have an answer for that.  19 Q. Or traced back to any pharmaceutical  20 distributor?  21 A. I don't have an answer for that.  22 Q. Or traced back to any manufacturer?  23 A. No.  24 Q. Does your office attempt to develop  25 any kind of statistics on where the opioids you</p>
<p style="text-align: right;">Page 235</p> <p>1 could come up with an answer for that.  2 Q. Is your office permitted to dismiss  3 criminal charges or not file criminal charges in  4 exchange for cooperation from the individual?  5 A. Yes, we have the authority to do  6 that.  7 Q. Is your office authorized to agree  8 to a more lenient sentencing allocution from  9 your office in exchange for an individual's  10 cooperation?  11 A. We can do that.  12 Q. Do you have policies governing when  13 you would take those steps in regards to dealing  14 with defendants who might have information about  15 the source of opioid drugs?  16 MS. HERMIZ: Objection to form.  17 A. No written policies as to that.  18 Q. What are your office's practices  19 regarding that issue?  20 A. Practices, first is defer to law  21 enforcement and have the consent from law  22 enforcement on it. Second is there's a smell  23 test that would be passed and it's, again,  24 something where case by case we would have to  25 look to the facts and circumstances.</p>	<p style="text-align: right;">Page 237</p> <p>1 encounter are coming from?  2 MS. HERMIZ: Objection to form.  3 A. No. We do not have that luxury with  4 our resources.  5 Q. How many total employees did your  6 office have in 2017?  7 A. I believe 209.  8 Q. Of those, how many are prosecutors?  9 A. I believe between 55 and 60.  10 Q. And of those prosecutors, how many  11 handle criminal cases involving drugs?  12 A. 35 in the criminal division and four  13 in the juvenile division. Actually, you could  14 probably count our child protection unit that  15 works with CSEA on cases, probably another five  16 in there, because they do parents who are  17 involved when children services is going in to  18 take the children out of the home, and there are  19 defenses in those for the parents to keep the  20 childrens that are drug-related cases. So I'd  21 say you're probably at 46 then, or 45.  22 MS. HERMIZ: Would this be a good  23 place to stop for a five-minute break?  24 MS. WOODS: Sure.  25 THE VIDEOGRAPHER: Off the record at</p>

<p style="text-align: right;">Page 238</p> <p>1 3:23. 2 (Recess had.) 3 THE VIDEOGRAPHER: On the record, 4 3:32. 5 BY MS. WOODS: 6 Q. Mr. Gessner, before we took our 7 break, you stated that it was your belief that 8 the prescription opioids you see on the street, 9 some portion of them are manufactured by "the 10 same people that sell them to my pharmacy." My 11 question is, what is the basis for your belief 12 that some of those drugs found on the street 13 were manufactured by the companies that 14 distribute pharmaceuticals through legitimate 15 channels? 16 A. The basis for that would be your 17 questions about diversion of legal prescription 18 drugs; that if they're being diverted from the 19 pharmacy, as you've been asking, then what we 20 would find on the street would be those same 21 pills from the pharmacy, they've just been 22 diverted. 23 Q. And do you have any documents or 24 evidence in your possession in your office based 25 on your casework to show that the prescription</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Earlier in our conversation you 2 mentioned that your office was engaged in some 3 dispute with the county over your budget? 4 MS. HERMIZ: Objection to form. 5 A. Not this year. 6 Q. What year did that occur? 7 A. It may have been 2007, 2008 or 2009. 8 Q. What was the nature of that dispute? 9 A. We wanted more money to fund more 10 prosecutors. The county didn't want to give us 11 the money. 12 Q. What did your office do? 13 A. We created -- did a proposal, came 14 up with what we needed to, we believe, 15 demonstrate to county council and to judges of 16 the common pleas court of why we would need 17 those additional prosecutors. We met with the 18 judges, and once the judges agreed that they 19 would back us on that, county council decided to 20 approve our budget. 21 Q. In the ordinary course of the budget 22 process, does your office routinely meet with 23 the judges to get their support prior to 24 proposing a budget or was that something 25 unusual?</p>
<p style="text-align: right;">Page 239</p> <p>1 drugs found on the streets were manufactured by 2 any of the Defendants in this litigation? 3 A. I think if we looked through the 4 records and that and the different reports we 5 received on each drug, some of them may have the 6 actual pharmaceutical companies or manufacturers 7 stamped on them, so that would be the evidence 8 we would have. 9 Q. And you said that you think that 10 would be the case. Is that because, sitting 11 here today, you don't know whether or not any of 12 the prescription drug prosecutions in your 13 office involved prescription drugs that had been 14 manufactured by any of the Defendants in this 15 litigation? 16 A. No. I think that's just because it 17 makes sense and I'm trying to answer the 18 questions you're asking me. 19 Q. Okay. Just so we're clear, you 20 don't have a firm -- you don't have 21 documentation or evidence to back up that 22 opinion? 23 MS. HERMIZ: Objection to form. 24 A. I have a firm belief. I do not have 25 the evidence in front of me.</p>	<p style="text-align: right;">Page 241</p> <p>1 A. That's unusual, and that's an option 2 in the Ohio law for the courts to mandate 3 budgets for various groups that work with the 4 courts, but again, the typical way -- again, 5 Summit County is one of only two counties in the 6 state with a charter form of government, so we 7 have a county council. Most counties, so 86 of 8 them, have county commissioners. So that would 9 be a meeting with county council versus a 10 meeting with three commissioners. So there are 11 other counties, where you have courts routinely 12 set budgets for the courts and prosecutors, and 13 Summit County has been one more for the courts 14 to actually go to county council to get their 15 budget approved even though they can order it to 16 be approved. 17 Q. So ordinarily your budget is 18 approved and considered by Summit County, 19 correct? 20 A. Yes. 21 Q. But in this instance, am I correct 22 that essentially the courts, the judges 23 overruled Summit County and ensured that you got 24 the budget you desired? 25 A. No. The judges said they would</p>



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1 overrule Summit County and then Summit County  
2 granted us what we had requested.  
3 Q. I see. And what documents exist  
4 regarding this process?  
5 A. Whatever the county budget would  
6 have in it. Again, you would need to go back  
7 and look. You have the documents from 2018,  
8 2017 and 2016 there. You would want to go back  
9 a few more years.  
10 Q. To look at 2007, '08 and '09?  
11 A. Yes. Whichever one of them was when  
12 they expanded the courts to add two more courts.  
13 That would be the year you would want. I don't,  
14 off the top of my head, recall that date.  
15 Q. Are there documents apart from the  
16 final version of the operating budget that would  
17 reflect your office's interaction with the  
18 courts?  
19 A. I doubt, with the county retention  
20 and our office retention schedule, there would  
21 be documents of that, other than the final  
22 approved budget. Like I said, everyone agreed  
23 in the end.  
24 Q. And is that because you believe  
25 those documents were rightly deleted already?

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1 A. I don't know.  
2 Q. What sort of documents, reports,  
3 proposals or requests did your office create in  
4 furtherance of the request to the courts?  
5 A. I don't know if there was much  
6 creation, but I think it was more just a  
7 breakdown in the number of cases per court  
8 caseload in comparison of caseloads to other  
9 counties and similar size counties. Montgomery  
10 County in Dayton and Lucas County, Toledo  
11 have -- I believe we're the fourth largest,  
12 they're the fifth and sixth largest, and I think  
13 it was more comparison to them. So it was other  
14 statistics we just had them look at.  
15 Q. Did representatives from your office  
16 meet with the clerk -- excuse me, with the  
17 courts regarding this budget?  
18 A. At a judges' meeting we met one  
19 afternoon.  
20 Q. Were you at that meeting?  
21 A. Yes.  
22 Q. Who else from your office was there?  
23 A. Mary Ann Kovach and Sherri Bevan  
24 Walsh.  
25 Q. To the best of your recollection,

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1 when did that meeting occur?  
2 A. Either 2007, 2008 or 2009, probably  
3 October or November.  
4 Q. What was the purpose of the meeting?  
5 A. Well, it was the judges' regular  
6 meeting and we went to talk about our budget.  
7 Q. Who presented to the judges on the  
8 budget?  
9 A. I believe Mary Ann Kovach did.  
10 Q. Did you learn of the court's  
11 decision during that meeting or subsequent to  
12 the meeting?  
13 A. I believe subsequent. I think we  
14 stepped out before they discussed it.  
15 Q. And how did you learn of the court's  
16 decision regarding your budget?  
17 A. Probably one of them told us.  
18 Q. And how was that decision  
19 communicated to the county?  
20 A. We would -- spoke to the county  
21 executive at the time and spoke to county  
22 council members.  
23 Q. Has your office attempted to enlist  
24 the help of the courts to overrule the county in  
25 any other year other than the one you've just

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1 described during your time at the office?  
2 A. No. Every other year we've looked  
3 to the budget, we've looked to the resources the  
4 county has, and we've made sure we've been able  
5 to live within that, again, being responsible to  
6 the taxpayers in Summit County.  
7 Q. Let's take a look at Exhibit 1  
8 again. This is the 2018 operating budget for  
9 Summit County.  
10 Turning your attention first to page  
11 329 of the exhibit, SUMMIT 8742.  
12 A. Wait a second.  
13 Okay.  
14 Q. Does this chart list the full-time  
15 employees that were budgeted for the years 2014  
16 through 2018?  
17 A. For the general fund -- the general  
18 fund I believe -- let's see. I believe it does  
19 for the general fund.  
20 Q. Okay. And we see listed assistant  
21 county prosecutor 1, 2 and 3.  
22 A. Um-hum.  
23 Q. Why are the assistant county  
24 prosecutors separated by these numbers?  
25 A. Based on experience and pay scale.



<p style="text-align: right;">Page 246</p> <p>1 Q. And who is more experienced or 2 expensive between the different numbers, if you 3 know? 4 A. I can tell you 2 is in the middle. 5 I believe the -- 3 is the newer hires. I could 6 be wrong there. It may be 1. I don't know. 7 Q. Who is the chief assistant 8 prosecuting attorney? 9 A. Chief assistant prosecuting 10 attorney, that would be the chief of the 11 criminal division, the chief of the civil 12 division. 13 Q. Okay. So there's one over each of 14 those two divisions; is that right? 15 A. Yes. 16 Q. And then chief counsel, that's you? 17 A. Yes. 18 Q. And county prosecutor is the 19 elected -- 20 A. Prosecutor Walsh. 21 Q. Apart from those line items, are any 22 of the other staff listed on this chart 23 attorneys for the office? 24 A. No. Those are the attorneys in the 25 general division.</p>	<p style="text-align: right;">Page 248</p> <p>1 Q. Okay. 2 A. If you look on that one, which would 3 be page 337, you see chief assistant prosecuting 4 attorney, you see chief counsel under that, you 5 see .3. 6 Q. That's the remaining portion -- 7 A. Yes. 8 Q. -- of your position? 9 A. Yes. 10 Q. Are there other positions on the 11 general fund list of full-time employees that 12 are shared among other areas, like yourself? 13 A. Yes. 14 For example, if you look and see 15 chief assistant prosecutor, you see 2.25 on the 16 one. We actually have whole people. So if you 17 look, then, on 337, you'll see chief assistant, 18 .8, there again to fill that up. And then you 19 also want to keep looking all the way back to 20 page 344, and you'll see there, for our child 21 support division, another 118 employees there. 22 So if you add the 118 employees for 2018, plus 23 the 15.27 from the tax division to the 63.5, 24 hopefully you're close to whole people. 25 Q. Because those three separate</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. Okay. And if you look to the next 2 page, it continues, and provides at the bottom 3 totals. 4 A. Um-hum. 5 Q. So am I correct that in 2014 the 6 prosecutor's office was budgeted 69.49 full-time 7 employees? 8 A. Yes. 9 Q. And looking ahead to the current 10 year, 2018, on that same chart, the prosecutor's 11 office was budgeted 63.5 full-time employees; is 12 that right? 13 A. Yes. 14 Q. So the number of your office's 15 employees has actually gone down? 16 A. In the general fund, yes. 17 Q. Why is your position, chief counsel, 18 listed as .7 instead of 1.0? 19 A. Because they should pay me more. 20 Kidding. 21 Because part of my position is not 22 on the general fund; it is on the -- if you turn 23 a few pages to the tax division, to -- I also 24 oversee the tax division as chief counsel, so 3 25 percent -- or 30 percent is attributed there.</p>	<p style="text-align: right;">Page 249</p> <p>1 divisions comprise the total of your office? 2 A. Yes. 3 Q. And the only portion of your office 4 that focuses on prosecuting drug crimes is the 5 general fund criminal division, correct? 6 A. And juvenile. And we also -- the 7 prosecutors -- I'm not sure the prosecutors 8 under grants, whether or not they are counted on 9 there. I believe they are in the general fund, 10 but I need to make sure. 11 Q. Okay. Turning your attention now to 12 page 331, which ends SUMMIT 8744 -- 13 A. Okay. 14 Q. -- there is -- there are line item 15 descriptions and there are the actual 16 expenditures for 2015, 2016, 2017 and then the 17 adopted budget for 2018. 18 A. Um-hum. 19 Q. My first question is about overtime, 20 the line item for overtime. 21 A. Yes. 22 Q. What portion of that expense is 23 provided to prosecutors? 24 A. Zero. 25 Q. What portion of that expense is</p>

<p style="text-align: right;">Page 250</p> <p>1 provided to paralegals or support staff for the 2 criminal division's prosecutions? 3 A. I think that would be split between 4 the secretaries, the administrative staff in 5 civil, in criminal and in juvenile. 6 Q. Do you know what portion of the 7 overtime costs are attributed to the criminal 8 division specifically? 9 A. No. 10 Q. Is there a way to find that out? 11 A. Possibly. 12 Q. How would you go about trying to 13 determine what percentage of the overtime costs 14 for your department are attributable to the 15 criminal division? 16 A. You would need to pull the 17 secretaries that are assigned to the criminal 18 division and see what overtime they were 19 awarded. 20 Q. Are there records that would assist 21 in answering that question? 22 A. Yes. The county has payroll records 23 for everyone. 24 Q. And in those records do the 25 secretaries report not just the overtime hours</p>	<p style="text-align: right;">Page 252</p> <p>1 that overtime was attributable to opioid drug 2 crimes? 3 A. It would probably be just a general 4 determination as to -- if you look at page 322, 5 where you've got the administrative chart for 6 the office, you can see criminal division 7 support staff over in the left; indictment 8 secretaries, there were four; courtroom 9 secretaries, there were eight; Grand Jury 10 coordinator, there was one. So those would be 11 all related to criminal cases. Whether there 12 would be overtime for people staying to work on 13 indictments, overtime for courtrooms, or 14 overtime in the Grand Jury, that would be the 15 individuals who would receive that overtime. 16 To the right you have juvenile 17 division support staff. You have administrative 18 assistant, legal secretaries and receptionist. 19 Again, you would need to look there. 20 Q. When you say "look there," where are 21 you referring to? 22 A. The secretaries who are made up by 23 those numbers. 24 Q. Right. So would you have to 25 interview the secretaries themselves?</p>
<p style="text-align: right;">Page 251</p> <p>1 worked but what projects they actually were 2 working on? 3 A. I do not believe they report what 4 they're working on. 5 Q. So how could you determine what 6 portion of those overtime hours were 7 attributable to the criminal work? 8 A. If it's a criminal secretary and 9 they're doing work overtime, it would be 10 criminal work. 11 Q. Okay. So the secretaries are 12 assigned specifically to either criminal or 13 civil or juvenile? 14 A. Yes, unless they're floating. 15 Q. What are the names of the 16 secretaries who are assigned specifically to 17 criminal work, if you know? 18 A. I don't -- I can go through the 19 whole list. I don't have them all in front of 20 me. Let's see. 21 Q. Let me ask you a different question. 22 If we looked at a secretary who had 23 been assigned to work on criminal work 24 specifically, if we looked at her overtime, how 25 could we go about determining what percentage of</p>	<p style="text-align: right;">Page 253</p> <p>1 A. No. You could do that based on the 2 payroll records. County payroll would have who 3 received overtime. 4 Q. And to determine what a particular 5 employee was doing, what their -- what type of 6 work they were doing during their overtime, 7 would you be able to refer to some record that 8 is maintained by your office? 9 A. No. 10 Q. Moving down the chart that's on -- 11 A. Hold on a minute. Also, on that 12 same page, you see victim service coordinator, 13 victim advocates listed. So our victim 14 advocates also can receive overtime. They're 15 not overtime exempt. So some of that money 16 could be apportioned to them. 17 Q. Okay. Victim advocates. And are 18 they assigned to -- 19 A. Courtrooms. 20 Q. Are any assigned specifically to 21 criminal matters? 22 A. Yes. They're all criminal matters. 23 Q. They're all criminal, okay. 24 Moving down the list, what is 25 referred to by fringe benefits?</p>

<p style="text-align: right;">Page 254</p> <p>1 A. Which page are you on?</p> <p>2 Q. 331.</p> <p>3 A. Healthcare primarily.</p> <p>4 Q. What is referred to as internal</p> <p>5 services?</p> <p>6 A. Internal services are different</p> <p>7 expenses that the office has that the county</p> <p>8 then bills back against our budget. So, for</p> <p>9 example, the two floors we use in the safety</p> <p>10 building, there's internally a charge to the --</p> <p>11 where the county bills our office for our office</p> <p>12 space and then that is taken from our budget.</p> <p>13 Also, if we use the IT department. So we have</p> <p>14 the county IT department come in to search for</p> <p>15 records, say, on opioid cases we prosecuted.</p> <p>16 They're going to bill our office for that time</p> <p>17 they've spent, which then comes out of our</p> <p>18 budget.</p> <p>19 Q. There is a description "Other" on</p> <p>20 this budget near the bottom.</p> <p>21 A. Um-hum.</p> <p>22 Q. What is your understanding of what</p> <p>23 types of expenses are comprised by "Other"?</p> <p>24 A. One example there would be trial</p> <p>25 expenses. So I believe for 2017 there was</p>	<p style="text-align: right;">Page 256</p> <p>1 us to get the \$250,000 from the violence against</p> <p>2 women, we had to put up, I believe, a portion of</p> <p>3 that.</p> <p>4 Q. Okay. So that last line item, it's</p> <p>5 called "Matching," and that's because you</p> <p>6 received from the federal government an amount</p> <p>7 at least equal to the amounts listed under local</p> <p>8 grant --</p> <p>9 A. Some are federal and some are state.</p> <p>10 Q. Okay. And in 2018 what is your</p> <p>11 total operating budget for the prosecutor</p> <p>12 general office?</p> <p>13 A. 5 million 824 dollars.</p> <p>14 Q. How has that total budget changed</p> <p>15 over the years you've been with the office?</p> <p>16 A. Well, it -- I think if you look to</p> <p>17 the -- go back to the second page there -- you</p> <p>18 have it as 8415 -- it's an introductory letter</p> <p>19 from the Executive Ilene Shapiro. She says that</p> <p>20 in 2008 the county's total budget was 576</p> <p>21 million. In the 2018 budget it's 529.2 million.</p> <p>22 So if you look at our budget historically up</p> <p>23 through 2008, our budget was significantly</p> <p>24 higher than it is now. I believe we may have,</p> <p>25 in 2008, been at, like, 6.2 or 6.3 million. And</p>
<p style="text-align: right;">Page 255</p> <p>1 about approximately \$50,000 that was line item</p> <p>2 for trials. So that would be one of those</p> <p>3 others.</p> <p>4 Q. What, specifically, type of -- what</p> <p>5 type of expenses?</p> <p>6 A. Expert witness fees, court</p> <p>7 reporters, typing and transcription fees.</p> <p>8 Q. What else other than trial expenses</p> <p>9 is included in the category "Other"?</p> <p>10 A. I don't know if that would -- let's</p> <p>11 see. Let's see. "Other." I believe, like, our</p> <p>12 computers. I don't know if our case management</p> <p>13 system is -- is within that amount. We pay a</p> <p>14 monthly fee for the case management system. I</p> <p>15 believe that's \$14,000 a month.</p> <p>16 Q. I don't want you to guess, so if you</p> <p>17 don't know, that's okay.</p> <p>18 With respect to the description</p> <p>19 "Local grant match" --</p> <p>20 A. Um-hum.</p> <p>21 Q. -- what is that referring to?</p> <p>22 A. For grants such as the VOCA and VAWA</p> <p>23 grants that we have for our advocates and for</p> <p>24 our domestic violence unit, there is a match</p> <p>25 required, a percentage match that, in order for</p>	<p style="text-align: right;">Page 257</p> <p>1 then it's gone down again. Then when the county</p> <p>2 has found some better economic times and revenue</p> <p>3 has increased a bit, you've seen it bump back up</p> <p>4 some. The county went several years with no</p> <p>5 cost of living increases, anything of that sort.</p> <p>6 And those were reinstituted, I believe, in 2017,</p> <p>7 and that's when you'll see again the budget</p> <p>8 increase down there.</p> <p>9 Q. And even today, in 2018, your budget</p> <p>10 has not returned to the level it was at in 2008,</p> <p>11 correct?</p> <p>12 A. Nor has our staffing.</p> <p>13 Q. Does the funds for indigent defense</p> <p>14 come out of the prosecutor's office's budget?</p> <p>15 A. No.</p> <p>16 Q. Does it come out of the court's</p> <p>17 budget?</p> <p>18 A. It comes out of -- it's a separate</p> <p>19 item for the court, and in the past several</p> <p>20 years it has been over budget every year.</p> <p>21 Q. Are there any line items in your</p> <p>22 prosecutor's office budget that relate</p> <p>23 exclusively to opioids?</p> <p>24 A. No. We don't have that luxury.</p> <p>25 Q. Have you ever attempted to figure</p>

<p style="text-align: right;">Page 258</p> <p>1 out how much of your office's expenses for a  2 particular year were attributable specifically  3 to opioids?  4 A. No. There's no one who has that  5 time to sit down and try to figure that out.  6 Q. How hard would it be to do that?  7 MS. HERMIZ: Objection to form.  8 A. I think extremely hard. If you want  9 to sit down through 4,000 cases and then  10 calculate the hours put in on each one of those  11 cases -- that would be necessary to do that. I  12 think you would need an economist for that.  13 Q. You're not an economist, are you?  14 A. No.  15 Q. And as you sit here today, do you  16 know how much of your budget for the past fiscal  17 year was dedicated to drug prosecutions?  18 A. No. I can tell you how much was  19 dedicated to prosecutions, but not drug  20 prosecutions.  21 Q. And how much was dedicated to  22 prosecutions?  23 A. All of it.  24 Q. The total -- the total expenditures?  25 A. Yes.</p>	<p style="text-align: right;">Page 260</p> <p>1 point -- a point where it was probably 80 to 90  2 percent. That's probably come down some in the  3 past year.  4 Q. Okay. I know you're using the word  5 "probably" a lot. Is that because you haven't  6 actually reviewed the specific numbers or data  7 on this point?  8 A. Yes. That's correct.  9 Q. And you're testifying based on your  10 experience in the office?  11 A. Yes.  12 Q. And based on anecdotal evidence?  13 A. Yes.  14 Q. And based on that, it's your belief  15 that approximately 70 percent of your office's  16 work relates to drug crimes, and of those drug  17 crimes, approximately, was it 80 to 90 percent  18 are opioid related? So of that subcategory,  19 what percentage of those involved prescription  20 opioids?  21 MS. HERMIZ: Objection to form.  22 A. I don't know. I would have to try  23 to sift through those to find that out.  24 Q. Today does your office have any  25 prosecutors who focus only on drug crimes?</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. But you're not able to break down  2 for us what percentage of your operating  3 expenses related to prescription opioids, are  4 you?  5 A. No.  6 Q. Do you have any sense of how much it  7 cost your department to respond to  8 opioid-related incidents last year?  9 MS. HERMIZ: Objection to form.  10 A. I could tell you that we're  11 probably -- when cases come in, I review cases.  12 I will -- if cases go into Grand Jury that are  13 no billed or remanded, if, again, cases are  14 dismissed, other information that comes in as  15 far as the cases are coming in and being  16 assigned in our office, I would say probably  17 about 70 percent of the cases we do in the  18 office are, in one form or another, drug  19 related.  20 Q. Approximately 70 percent?  21 A. Yes.  22 Q. And of the 70 percent of the cases  23 that are drug related, what percentage of those  24 are opioid drug related?  25 A. I'd say probably there was a</p>	<p style="text-align: right;">Page 261</p> <p>1 A. No. We'd love to.  2 Q. Do you know how many prosecutors  3 today have pending cases that involve  4 prescription opioids?  5 A. No, I do not.  6 Q. Do your prosecutors -- are they  7 required to keep records of their time and  8 attendance?  9 A. Yes. Every prosecutor comes in,  10 signs in, and every prosecutor, when they leave,  11 signs out of the office. Any time they put in  12 leave, we have a Kronos system that would have  13 their sick or vacation or personal time logged  14 onto that and approved.  15 Q. And are your prosecutors required to  16 report in any form or fashion what proportion of  17 their working hours were spent on particular  18 types of cases?  19 A. No.  20 Q. What is the salary range for an  21 assistant prosecutor in your office?  22 A. Courtroom prosecutors would range  23 from -- in the felony division, from \$50,000 to,  24 I would say, \$81,000.  25 Q. And when you estimated that</p>

<p style="text-align: right;">Page 262</p> <p>1 approximately 70 percent of your criminal cases 2 are related to drugs -- 3 A. Um-hum. 4 Q. -- what were you considering to be 5 drug related? 6 A. Crimes where individuals may be 7 either possessing drugs, trafficking in drugs, 8 committing crimes in order to commit those drug 9 crimes. Again, that's the majority of what we 10 deal with. 11 Q. Okay. So included in that 70 12 percent estimate are cases involving theft or 13 property theft? 14 A. Yes. Related to drug trade, yes. 15 Q. And included in that 70 percent 16 estimate are crimes involving the possession or 17 use of meth amphetamine or cocaine, correct? 18 A. Yes. 19 Q. Did you include in that 70 percent 20 estimate crimes of violence that also involved 21 evidence of drug use? 22 A. Yes. 23 Q. And to be clear, you included in 24 that 70 percent estimate all drug crimes, not 25 just opioid drugs, correct?</p>	<p style="text-align: right;">Page 264</p> <p>1 it 30. And then in our delinquency division we 2 have four prosecutors, and that's juvenile. And 3 in our dependency and neglect we have six 4 prosecutors. So that would take that number to 5 40. And, again, with adding a chief of the 6 criminal division, it's 41. And a portion of my 7 time would be 41. something. That would be the 8 criminal and juvenile divisions. Again, if you 9 take this budget, add those numbers and then 10 add -- 11 Q. Add which numbers, the assistant 12 county prosecutor 1, 2 and 3? 13 A. 1, 2 and 3, plus the chief 14 assistant, plus a portion of chief counsel -- 15 and I'm -- and then looking as to what portion 16 out of the -- it should be -- it should be about 17 that -- so let's see. I don't -- I don't know 18 if there's a different list here for juvenile. 19 I don't see that on here. But I can tell you 20 that's the numbers we have. 21 Q. Okay. And just so we're clear, 22 dependency and neglect proceedings are not 23 criminal prosecutions, right? 24 A. No, but they are typically related 25 to criminal prosecutions. Many times when --</p>
<p style="text-align: right;">Page 263</p> <p>1 A. Yes. 2 Q. So looking at your budget, if we 3 were to add up the number of prosecutors for 4 each year based on that chart we looked at, on 5 page 329 and 330, that would allow us to 6 understand the total amount of prosecutors 7 working in the criminal division, correct? 8 MS. HERMIZ: Objection to form. 9 Q. So let me make that a little bit 10 more clear. 11 If we added up the line item for 12 assistant county prosecutor 1, assistant county 13 prosecutor 2, assistant county prosecutor 3, is 14 that the total number of prosecutors engaged in 15 prosecuting drug crimes in your office? 16 MS. HERMIZ: Objection to form. 17 A. No. We have -- in our office, in 18 the criminal division we have two prosecutors 19 for each of the ten courtrooms, which is 20. 20 The domestic violence courtroom has an 21 additional prosecutor. That makes that 21. We 22 have five supervisors. That makes -- takes that 23 number up to 26. We have two prosecutors in our 24 appellate division. That makes it 28. Two 25 prosecutors assigned to Grand Jury, which makes</p>	<p style="text-align: right;">Page 265</p> <p>1 when Children's Services come in and remove 2 children from homes, a lot of those parents are 3 charged with crimes, and so they are -- there is 4 information from those cases that will be then 5 passed on from our dependency and neglect, we 6 call child protection prosecutors, to our 7 criminal division. So it's sort of like a quasi 8 criminal there, where the juvenile prosecutors 9 in the delinquency are considered criminal. 10 Q. If we could stay with Exhibit 1 and 11 look back to page 324, referring your attention 12 to the "Performance Measure" of that page. 13 A. Um-hum. 14 Q. The first measure is listed as 15 "Caseload, number of cases disposed." What does 16 it mean to be a case disposed? 17 A. That means a case is done and over 18 with, so it's been resolved that year. 19 Q. And by "resolved" do you mean that 20 the case has either been -- led to a conviction 21 or dismissal? 22 A. Yes. The case is no longer active. 23 Q. Okay. And according to Exhibit 1, 24 the prior year, which would be 2017, the 25 caseload was 3,986?</p>



<p style="text-align: right;">Page 266</p> <p>1 A. Yes.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Gessner Deposition</p> <p>4 Exhibit 10, 2008 County of Summit</p> <p>5 Operating Budget Beginning Bates</p> <p>6 Number SUMMIT_000015385, was marked</p> <p>7 for purposes of identification.)</p> <p>8 - - - - -</p> <p>9 Q. I'm going to hand you what's been</p> <p>10 marked as Exhibit 10. This is the 2008</p> <p>11 operating budget.</p> <p>12 If I could refer your attention to</p> <p>13 page 287 of Exhibit 10. According to Exhibit</p> <p>14 10, your office's caseload in 2006 was 5,200; is</p> <p>15 that correct?</p> <p>16 A. That's what the document says.</p> <p>17 Q. And in 2007 it was 5,200; is that</p> <p>18 correct?</p> <p>19 A. That's what it says.</p> <p>20 Q. Do you have any reason to doubt the</p> <p>21 accuracy of this budget?</p> <p>22 A. No. But I can tell you why those</p> <p>23 numbers are there.</p> <p>24 Q. Why are those numbers there?</p> <p>25 A. Okay. In 2006 there was an</p>	<p style="text-align: right;">Page 268</p> <p>1 increase in the homicides, too.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Gessner Deposition</p> <p>4 Exhibit 11, 2012 County of Summit</p> <p>5 Operating Budget Beginning Bates</p> <p>6 Number SUMMIT_000002922, was marked</p> <p>7 for purposes of identification.)</p> <p>8 - - - - -</p> <p>9 Q. Handing you what's been marked as</p> <p>10 Exhibit 11, this is the 2012 operating budget.</p> <p>11 If I could refer your attention to page 347 of</p> <p>12 this document.</p> <p>13 According to Exhibit 11, even in</p> <p>14 2010, several years later, the caseload was</p> <p>15 still higher than it is today, at 4,243 cases;</p> <p>16 is that correct?</p> <p>17 A. That's what it says.</p> <p>18 Q. And in 2011 your caseload was</p> <p>19 4,100 --</p> <p>20 A. Um-hum.</p> <p>21 Q. -- correct?</p> <p>22 And that caseload is higher than any</p> <p>23 year that followed up to the present day,</p> <p>24 correct?</p> <p>25 MS. HERMIZ: Objection to form.</p>
<p style="text-align: right;">Page 267</p> <p>1 initiative -- I believe Pete Elliott, the U.S.</p> <p>2 Marshal, they went in, they found a lot of --</p> <p>3 they were very aggressive in going after old and</p> <p>4 outstanding warrants for individuals, and we</p> <p>5 also had a Fugitive Safe Surrender program going</p> <p>6 on in those years that brought in a lot of</p> <p>7 people on cases that were standing out there and</p> <p>8 were not active. So we had a spike there for a</p> <p>9 few-year period.</p> <p>10 Q. And by "those years," are you</p> <p>11 referring to 2006, 2007 and 2008?</p> <p>12 A. Yes.</p> <p>13 Q. And according to Exhibit 10, the</p> <p>14 caseload for 2008 was also 5,200; is that right?</p> <p>15 A. That's what it says.</p> <p>16 Q. So, in fact, your office's caseload</p> <p>17 has decreased from 2008 to 2017, which we had</p> <p>18 just looked at, correct?</p> <p>19 A. If we compare those two, it was</p> <p>20 higher in 2008. You'll see, though, shortly</p> <p>21 after that it went down and then started</p> <p>22 building back up, crime cyclical also.</p> <p>23 And if you look, also, there, you'll</p> <p>24 see the number of homicides. Compare those to</p> <p>25 the ones today. You'll see there was a clear</p>	<p style="text-align: right;">Page 269</p> <p>1 A. I'm sorry. You're going to have to</p> <p>2 repeat that.</p> <p>3 Q. The 2011 caseload of 4,100 is a</p> <p>4 higher caseload than your office experienced in</p> <p>5 any subsequent year, correct?</p> <p>6 MS. HERMIZ: Same objection.</p> <p>7 A. I would have to see those numbers,</p> <p>8 but I'm not going to disagree with you.</p> <p>9 Q. Well, Mr. Gessner, the number is</p> <p>10 right there in front of you. What numbers would</p> <p>11 you need to see, the intervening years?</p> <p>12 A. Yes.</p> <p>13 Q. According to Exhibit 2 -- we just</p> <p>14 went over this one -- in 2017 your caseload was</p> <p>15 lower than 4,100, correct?</p> <p>16 A. Um-hum.</p> <p>17 Q. And in 2016, which would report on</p> <p>18 the prior year, which is 2015, your caseload was</p> <p>19 lower than 4,100, correct?</p> <p>20 A. Yes.</p> <p>21 Q. I don't have further years to show</p> <p>22 you at this time, but it's your testimony that</p> <p>23 you don't have any reason to doubt the accuracy</p> <p>24 of the caseloads as reported in the budget</p> <p>25 documents, correct?</p>

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1 A. I can tell you, because I've  
2 prepared these documents, that these are  
3 estimated numbers, again, when you look on them,  
4 and our budget is prepared in -- usually we  
5 submit the documents in September to October,  
6 with a prediction of what we're going to have by  
7 the end of the year. So I would think that this  
8 year the 4,040 will be higher than that, and I  
9 doubt that -- for example, the one where you had  
10 three years of the exact same number, that those  
11 were not the actual numbers.  
12 Q. Your office was receiving more  
13 funding in 2011, when its caseload is reported  
14 as being higher in these budget documents, than  
15 your office received last year, correct? If you  
16 look at Exhibit 11, page 350 -- excuse me. Not  
17 page 350. Exhibit 11, page 341. According to  
18 Exhibit 11, page 341, your office's budget was  
19 actually higher in 2009 than it is currently,  
20 correct?  
21 A. Yes.  
22 Q. And in 2011 your actual expenditures  
23 were approximately 5.09 million; is that  
24 correct?  
25 A. Yes.

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1 Q. Which is less than your budget for  
2 2017, correct?  
3 A. Yes.  
4 Q. Yet your caseload was higher for  
5 2011 than it was for 2017?  
6 A. That's what the documents show, yes.  
7 Q. How have the number of prosecutors  
8 assigned to work on criminal matters changed  
9 between 2006 to the present day?  
10 A. 2006 to the present? When the court  
11 expanded, whichever year that was, we added  
12 three prosecutors there. There was a time we  
13 had some grants, where we had some additional  
14 prosecutors working then. The number of  
15 prosecutors, I believe, has either stayed the  
16 same or gone down a little bit.  
17 So if you look at 2008 on your  
18 budget on page 342 of Exhibit 11, you see in the  
19 general fund 87.11 employees, where on the  
20 current budget you see 63.5 on page 330 of  
21 Exhibit 1.  
22 Q. And are you able to tell us as --  
23 for each of the years between 2006 to the  
24 present day how many drug cases your office  
25 disposed of?

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1 A. No.  
2 Q. Are you able to tell us what  
3 percentage of the caseloads reflected in the  
4 budget were drug cases?  
5 A. Other than telling you it's about 70  
6 percent, no.  
7 Q. And has it been 70 percent  
8 consistently between 2006 and 2018?  
9 MS. HERMIZ: Objection to form.  
10 A. There are times where the types of  
11 cases rise and fall again, so in any given year,  
12 you would need to look at that year.  
13 Q. Has your office always prosecuted a  
14 large amount of drug crimes?  
15 A. Yes.  
16 Q. Has it always been the case that the  
17 majority of crimes prosecuted by the Summit  
18 County's Prosecutor's Office are drug crimes?  
19 A. Those are the majority of the cases  
20 brought to us by law enforcement.  
21 Q. What percentage increase to your  
22 caseloads have you experienced because of the  
23 opioid epidemic?  
24 MS. HERMIZ: Objection to form.  
25 A. As to the overall number of cases,

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1 that is something that, based on the numbers you  
2 have, we would not have an increase in the  
3 overall number, but within those numbers, the  
4 amount of drug cases has -- again, with -- when  
5 the fentanyl hit, when the carfentanil hit, it  
6 was clearly an increase in those cases.  
7 Q. Okay. So you're saying between 2006  
8 to the present day, your office's caseloads have  
9 decreased but the proportion of drug crimes may  
10 have increased? Is that what you're saying?  
11 A. And depending on the type and nature  
12 of the drugs, yes.  
13 Q. And specifically, based on your  
14 experience, you believe increases were related  
15 to fentanyl and carfentanil --  
16 MS. HERMIZ: Objection to form.  
17 Q. -- is that correct?  
18 A. If you look to the -- I believe that  
19 presentation I did in Indiana, I think there are  
20 some numbers that may be broken down in there.  
21 Q. What sort of numbers?  
22 A. The number of heroin cases or heroin  
23 death cases.  
24 MS. WOODS: Could we go off the  
25 record and take a short break?

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1 THE VIDEOGRAPHER: Off the record at  
2 4:24.  
3 (Recess had.)  
4 THE VIDEOGRAPHER: On the record,  
5 4:32.  
6 BY MS. WOODS:  
7 Q. Okay. Before we broke, I'd been  
8 asking you some questions about some changes  
9 that have occurred in your office between 2006  
10 and 2018.  
11 Am I correct that the total number  
12 of assistant county prosecutors decreased from  
13 approximately 48 in 2007 down to approximately  
14 35.7 in 2018?  
15 MS. HERMIZ: Object to form.  
16 A. I would disagree based on I don't  
17 know if your numbers are -- which divisions  
18 they're in, but there was not that great of a  
19 decrease in number of employees.  
20 Q. In the criminal division?  
21 A. In the criminal division, yes.  
22 Q. Based on your recollection, what was  
23 the decrease in number of assistant county  
24 prosecutors in the criminal division?  
25 A. I believe there was a decrease in

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1 two or three in the criminal division, and then  
2 we reduced one in juvenile, which came over to  
3 criminal to put criminal back up a little bit.  
4 Q. How many current prosecutors in the  
5 criminal division do you have?  
6 A. I think I went through the list with  
7 you.  
8 Q. Not including supervisors or the  
9 county prosecutor herself.  
10 A. 30.  
11 Q. Based on your recollection, has the  
12 number of prosecutors in the criminal division  
13 remained at 30 over the last decade?  
14 MS. HERMIZ: Objection to form.  
15 A. No. I believe it was higher before.  
16 Q. How high was it at its highest?  
17 A. At its highest, I do not know that.  
18 Q. But again, if we add up the line  
19 items for assistant county prosecutors 1, 2 and  
20 3 in the criminal division prosecutor section of  
21 your budget, that would tell us the total number  
22 of prosecutors for that year?  
23 A. Yes, except the documents you have  
24 -- not limited to just the criminal division.  
25 Q. What else is included?

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1 A. I -- from that document -- I'm  
2 confused by it. We have our criminal division,  
3 our juvenile division, our civil and tax  
4 division. Independent of that budget is the  
5 child support division. That has its own  
6 attorneys. That's not in there. But those  
7 numbers are not all in there and I don't know if  
8 you have all of the papers there or not.  
9 Q. Okay. When you said you were  
10 confused by that document, are you referring to  
11 the budget documents that you've been looking  
12 at, maybe Exhibit 1 as an example?  
13 A. Yes.  
14 Q. Okay. And if we wanted to determine  
15 how many assistant county prosecutors were  
16 working on criminal matters in the Summit County  
17 Prosecutor's Office on any given year, how could  
18 we go about obtaining that information?  
19 A. You would obtain that either from  
20 county payroll or from our -- our table of  
21 employees.  
22 Q. Where is the table of employees?  
23 A. Part of it is in the beginning of  
24 this document. You can see from -- over the  
25 years, from these various documents you gave to

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1 me, the county requires it in a different format  
2 than it previously was, where now there are just  
3 numbers listed here where previously there were  
4 names listed. So there is that table of  
5 organization that would be available to show who  
6 was in each position.  
7 Q. So at least in 2018, you could  
8 simply add up the numbers that are contained in  
9 the org chart that is part of the budget  
10 document; is that correct?  
11 A. I would hope so.  
12 And the answer is yes. If you look  
13 at page 323 of Exhibit 1, under criminal  
14 division, you see assistant prosecutor  
15 supervisors, 5; assistant prosecutors, 23;  
16 appellate division, two; assistant prosecutors,  
17 two. You add those together and you would have  
18 the 30 number, which is what I gave you.  
19 Q. That's helpful. Thank you.  
20 - - - - -  
21 (Thereupon, Gessner Deposition  
22 Exhibit 12, One-Page Spreadsheet -  
23 Marked "Confidential - Subject to  
24 Protective Order," was marked for  
25 purposes of identification.)

<p style="text-align: right;">Page 278</p> <p>1 - - - - -</p> <p>2 Q. I'm marking for identification</p> <p>3 Exhibit 12 and handing that to you.</p> <p>4 Have you seen this document before?</p> <p>5 A. Nope. And it says, "Subject to a</p> <p>6 protective order, confidential."</p> <p>7 Q. Thank you for noting that.</p> <p>8 So this is a confidential document</p> <p>9 that was an exhibit to a recent filing by the</p> <p>10 Plaintiffs in this action. There is an</p> <p>11 exception to the protective order that applies</p> <p>12 and permits us to show you the document during</p> <p>13 your deposition.</p> <p>14 Now, you stated you had not seen</p> <p>15 this previously?</p> <p>16 A. No. This is the first I've seen it.</p> <p>17 Q. At any point were you consulted</p> <p>18 about the estimated amount of money the</p> <p>19 prosecutor's office spent on opioid-related</p> <p>20 matters between 2006 and 2017?</p> <p>21 A. I may have been. I don't recall.</p> <p>22 Q. Have you ever been asked to estimate</p> <p>23 the amount of expenses that your office has</p> <p>24 expended to handle opioid-related matters in any</p> <p>25 particular year?</p>	<p style="text-align: right;">Page 280</p> <p>1 information and, like I said, I'm not an</p> <p>2 accountant or an economist.</p> <p>3 Q. What process would you undertake to</p> <p>4 attempt to estimate the amount your office has</p> <p>5 spent on opioid --</p> <p>6 A. Make a determination on the exact</p> <p>7 number of cases, and then it would be something</p> <p>8 where you would have to attribute time based on</p> <p>9 cases that are pleas versus cases that go to</p> <p>10 trial; again, cases that have multiple pretrials</p> <p>11 versus cases that have few pretrials. Again, it</p> <p>12 would be -- it would be a project.</p> <p>13 Q. Before we took a break, you</p> <p>14 testified that you believed the incidence of</p> <p>15 drug cases prosecuted by your office have gone</p> <p>16 up in recent years.</p> <p>17 A. Yes.</p> <p>18 If you look at Exhibit 4, which you</p> <p>19 provided to me earlier, one, two, three, four --</p> <p>20 the fifth and sixth paragraphs in there would</p> <p>21 show the increase from 2010, that the number of</p> <p>22 indictments for possession of heroin has more</p> <p>23 than quadrupled since 2010; 2014, over 500</p> <p>24 defendants were prosecuted for possession of</p> <p>25 heroin as opposed to 157 in 2010. The</p>
<p style="text-align: right;">Page 279</p> <p>1 A. I think we've had general</p> <p>2 discussions with the county on that.</p> <p>3 Q. And who specifically from the</p> <p>4 county? Are you talking about county lawyers or</p> <p>5 someone else?</p> <p>6 A. I don't recall if that was county</p> <p>7 budget or if that was the county executive's</p> <p>8 office.</p> <p>9 Q. Are you prepared to defend the</p> <p>10 estimates of damages provided in this chart</p> <p>11 today?</p> <p>12 MS. HERMIZ: Objection to form.</p> <p>13 A. No. I don't know what these numbers</p> <p>14 even mean.</p> <p>15 Q. In that case, I'll retrieve the</p> <p>16 exhibit.</p> <p>17 If you were asked, would there be</p> <p>18 any way for you to estimate the total amount of</p> <p>19 money spent by your office on issues related to</p> <p>20 prescription opioids?</p> <p>21 MS. HERMIZ: Objection to form.</p> <p>22 A. Without sitting down again, looking</p> <p>23 in, apportioning cases and percentages of cases,</p> <p>24 I'm sure that that is something that, given</p> <p>25 time, I could do, but I don't have that</p>	<p style="text-align: right;">Page 281</p> <p>1 possession -- like possession of heroin,</p> <p>2 indictment, the number of defendants charged</p> <p>3 with trafficking in heroin has also increased.</p> <p>4 In 2010 there were 46 cases; 2014, there were</p> <p>5 152 cases.</p> <p>6 Q. And you testified that these</p> <p>7 statistics that you just read were obtained by</p> <p>8 actually going through the cases to determine</p> <p>9 which ones were heroin related, correct?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. Yes.</p> <p>12 Q. And do you have any statistics or</p> <p>13 have any statistics attempted to have been</p> <p>14 gathered by your office to determine how many</p> <p>15 cases related to prescription opioids?</p> <p>16 A. I do not believe they were broken</p> <p>17 down from different types of drugs.</p> <p>18 Q. Do you know whether crimes related</p> <p>19 to prescription opioids have increased or</p> <p>20 decreased or stayed the same over the years?</p> <p>21 A. I don't have a definitive answer for</p> <p>22 that.</p> <p>23 Q. Do you know whether other drug</p> <p>24 crimes, non-opioid drug crimes, have increased,</p> <p>25 decreased or stayed the same over the years?</p>



<p style="text-align: right;">Page 282</p> <p>1 A. Not like those.</p> <p>2 Q. When you say "not like those," what</p> <p>3 do you mean?</p> <p>4 A. Not like the heroin-related cases.</p> <p>5 Q. You're saying they haven't increased</p> <p>6 as dramatically as heroin?</p> <p>7 A. Right. And as I told you, we have</p> <p>8 crimes, again starting years ago, where it was</p> <p>9 cocaine and crack cocaine, then it went to meth</p> <p>10 amphetamines, then to heroin and the opiates,</p> <p>11 and now it's going back to actually meth</p> <p>12 amphetamines now. So while you see a decrease</p> <p>13 in the number of heroin, you're seeing an</p> <p>14 increase in the meth amphetamines because the</p> <p>15 public awareness, the public education, the</p> <p>16 crackdown on the heroin and the opiates has</p> <p>17 resulted in cheaper meth amphetamines coming in</p> <p>18 from Mexico and replacing them.</p> <p>19 Q. So is it fair to say some portion of</p> <p>20 the increase in drug crimes that your office has</p> <p>21 handled is due to the increase in meth</p> <p>22 amphetamine crimes?</p> <p>23 MS. HERMIZ: Objection to form.</p> <p>24 A. The current -- the current higher</p> <p>25 number of cases are -- are related to meth</p>	<p style="text-align: right;">Page 284</p> <p>1 A. We may have had some discussions</p> <p>2 with either the executive's office or county</p> <p>3 council members about that, but again, we're</p> <p>4 mindful of what is there. We can't ask for</p> <p>5 money that doesn't exist.</p> <p>6 Q. In prior years, and in your budget,</p> <p>7 your office has mentioned as a challenge a lack</p> <p>8 of work space for your prosecutors, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And another challenge that you've</p> <p>11 highlighted in prior budgets is the low salary</p> <p>12 paid to your prosecutors, correct?</p> <p>13 A. Yes.</p> <p>14 Q. But, to your knowledge, you have</p> <p>15 not, in any of your budgets, mentioned as a</p> <p>16 challenge prescription opioids?</p> <p>17 MS. HERMIZ: Objection to form.</p> <p>18 A. I believe the budgets you showed me</p> <p>19 talk about the heroin/fentanyl, which to us, as</p> <p>20 prosecutors, that encompasses all of this. You</p> <p>21 may refer to it as opiates. We're looking at it</p> <p>22 as, again, the heroin/fentanyl.</p> <p>23 Q. And the budgets that mention</p> <p>24 heroin/fentanyl were the 2017 and the 2018</p> <p>25 budgets, correct?</p>
<p style="text-align: right;">Page 283</p> <p>1 amphetamines; however, you also have to look at</p> <p>2 the prosecutions relating to the deaths, which</p> <p>3 are solely out there related to the heroin and</p> <p>4 the opiates, and those cases take significantly</p> <p>5 more time than a possession and a trafficking.</p> <p>6 Q. So you've never prosecuted a case</p> <p>7 involving a death that involved cocaine or meth?</p> <p>8 A. We've prosecuted cases where there</p> <p>9 were deaths involving cocaine and meth, but I</p> <p>10 don't believe in the involuntary manslaughters</p> <p>11 we've had those come up. Again, the connection</p> <p>12 with the medical examiner making those calls</p> <p>13 that it was clearly related and caused by that</p> <p>14 drug is nowhere near any of those -- what you</p> <p>15 have when you have someone getting fentanyl and</p> <p>16 carfentanil mixed into their heroin. They're</p> <p>17 not that deadly of drugs.</p> <p>18 Q. Has your office experienced a budget</p> <p>19 surplus in any year since you've worked there?</p> <p>20 MS. HERMIZ: Objection to form.</p> <p>21 A. No.</p> <p>22 Q. Has your office ever requested</p> <p>23 additional funding from the county on the</p> <p>24 grounds that it was necessary because of opioid</p> <p>25 crime?</p>	<p style="text-align: right;">Page 285</p> <p>1 A. Yes.</p> <p>2 Q. It was not mentioned in the earlier</p> <p>3 budgets; is that right?</p> <p>4 A. No. That's not in those documents.</p> <p>5 Q. What are your office's sources of</p> <p>6 funding?</p> <p>7 A. The taxpayers of Summit County,</p> <p>8 grants that we receive.</p> <p>9 Q. Do you also receive forfeitures from</p> <p>10 criminal or civil cases?</p> <p>11 A. There are forfeitures from criminal</p> <p>12 and civil cases, which go into law enforcement</p> <p>13 trust funds, which, under Ohio Revised Code,</p> <p>14 have restricted uses. They cannot be used for</p> <p>15 salaries or for any compensation of any</p> <p>16 employees.</p> <p>17 Q. Can they be used for any of your</p> <p>18 office's expenses?</p> <p>19 A. They have basically supplemented and</p> <p>20 taken place of the line items, where years ago</p> <p>21 we had that would be for the education and</p> <p>22 training of our prosecutors.</p> <p>23 Q. So you can use a portion of that</p> <p>24 forfeiture money to educate and train your</p> <p>25 staff; is that correct?</p>



<p style="text-align: right;">Page 286</p> <p>1 A. Our prosecutors, yes.</p> <p>2 Q. Can you also use a portion of that</p> <p>3 money to provide education and training to law</p> <p>4 enforcement agents?</p> <p>5 A. Yes. And we do that, and we can</p> <p>6 also -- we also are required to, I believe, put</p> <p>7 20 percent of that into community education,</p> <p>8 which we also do that.</p> <p>9 Q. Okay. And you use the money that</p> <p>10 you've obtained -- that law enforcement agents</p> <p>11 have obtained from forfeiture in order to fund</p> <p>12 those training programs; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Are they fully funded with the</p> <p>15 forfeiture money?</p> <p>16 A. In most cases they are.</p> <p>17 Q. In what cases are they not fully</p> <p>18 funded with forfeiture money?</p> <p>19 A. It would depend, I think. We've had</p> <p>20 a seminar where there was a small charge for</p> <p>21 individuals coming in to offset the lunch or</p> <p>22 something like that.</p> <p>23 Q. Does your office receive</p> <p>24 reimbursement from Title IV-E funding through an</p> <p>25 agreement with the Summit County Children's</p>	<p style="text-align: right;">Page 288</p> <p>1 rules of the unit there, it goes into the law</p> <p>2 enforcement trust fund, that we've already</p> <p>3 talked about, if it does come in, but there is a</p> <p>4 minimum balance they need to keep, and that</p> <p>5 money -- majority of that money is spent on</p> <p>6 buying equipment and other things to assist law</p> <p>7 enforcement in their fight against the drugs.</p> <p>8 And so after all of that is expended, then if it</p> <p>9 reaches a threshold, then it would be divided up</p> <p>10 between the members of the drug unit, including</p> <p>11 the prosecutor, into their law enforcement trust</p> <p>12 funds.</p> <p>13 Q. You mentioned your office also</p> <p>14 receives grant funds. From where do those grant</p> <p>15 funds come?</p> <p>16 A. VAWA and VOCA, Victims of Crimes Act</p> <p>17 and Violence Against Women's Act.</p> <p>18 Q. What amount of grant funding do you</p> <p>19 receive from those sources?</p> <p>20 A. I do not have the details of each of</p> <p>21 those. I know the last Violence Against Women</p> <p>22 grant was a three-year grant for \$750,000, with</p> <p>23 restrictions in it on how it could be spent, as</p> <p>24 is the VOCA.</p> <p>25 Q. Are you familiar with the -- a grant</p>
<p style="text-align: right;">Page 287</p> <p>1 Service Board?</p> <p>2 A. Yes. That is for the prosecutors in</p> <p>3 the dependency or neglect or child protection</p> <p>4 unit for their time that is spent. It's</p> <p>5 billable hours spent on the Children's Services</p> <p>6 case.</p> <p>7 Q. And are those prosecutors required</p> <p>8 to keep track of the portion of their working</p> <p>9 hours spent on those type of cases?</p> <p>10 A. Yes, they are. And that is the</p> <p>11 majority of their cases. Those prosecutors</p> <p>12 assigned to that division, that's what they do.</p> <p>13 Q. Does your office receive funding</p> <p>14 from the Summit County Juvenile Court for</p> <p>15 representation provided by the office for the</p> <p>16 Crossroads program?</p> <p>17 A. Yes. That is a small amount that</p> <p>18 comes in there, yes.</p> <p>19 Q. The Summit County Drug Unit has a</p> <p>20 responsibility to identify and destroy illegal</p> <p>21 channels of drugs into Summit County and arrest</p> <p>22 violators and seize their illicit financial</p> <p>23 assets. Does your office receive any funding or</p> <p>24 resources from those seizures?</p> <p>25 A. It's limited. If you look into the</p>	<p style="text-align: right;">Page 289</p> <p>1 to provide funding for Comprehensive Opioid</p> <p>2 Abuse Site-Based Program that was announced in</p> <p>3 May of this year?</p> <p>4 A. Is this an Akron grant or is that a</p> <p>5 Summit County grant?</p> <p>6 Q. The Department of Justice, Bureau of</p> <p>7 Justice Assistance grant.</p> <p>8 A. Okay. Who was awarded that grant?</p> <p>9 - - - - -</p> <p>10 (Thereupon, Gessner Deposition</p> <p>11 Exhibit 13, E-Mail from Brad Gessner</p> <p>12 to Margaret Scott, dated May 10,</p> <p>13 2018, Beginning Bates Number</p> <p>14 SUMMIT_001468944, was marked for</p> <p>15 purposes of identification.)</p> <p>16 - - - - -</p> <p>17 Q. Let me mark for identification</p> <p>18 Exhibit 13, SUMMIT 1468944. This is an e-mail</p> <p>19 sent to you May 10th, 2018 regarding the</p> <p>20 Department of Justice, Bureau of Justice</p> <p>21 Assistance grant referred to as the</p> <p>22 Comprehensive Opioid Abuse Site-Based Program.</p> <p>23 A. Um-hum.</p> <p>24 Q. Do you recall receiving this e-mail?</p> <p>25 A. Yes. And if you see at the top, you</p>

<p style="text-align: right;">Page 290</p> <p>1 see I forwarded that to Margaret Scott, the 2 chief of the criminal division. 3 Q. Why did you forward it to Ms. Scott? 4 A. For her to have the prosecutors 5 assigned to review grants, review and see if we 6 were qualified to apply for that. 7 Q. Do you know whether your office 8 applied for it? 9 A. I don't know. I don't know if that 10 is the grant application you showed me earlier. 11 Q. And according to the e-mail, the 12 grant -- the available grants ranged from 13 \$100,000 to 1.5 million dollars; is that 14 correct? 15 A. Um-hum. 16 Q. What other grants has your 17 department applied for, if any? 18 MS. HERMIZ: Objection to form. 19 A. I don't have a list in front of me. 20 Q. Based on your recollection, has your 21 office applied for any other opioid-related 22 grants? 23 A. Again, I don't know if the document 24 you showed me earlier of the grant we applied 25 for that we were not given is that same grant or</p>	<p style="text-align: right;">Page 292</p> <p>1 community. We've talked at those. Again, we've 2 done our newsletter, our senior newsletter that 3 goes out. We have an anti-crime calendar, which 4 is done by local school children, and that -- 5 that has anti-drug messages. We've taken those, 6 distributed those throughout the community. 7 And, again, we have speakers go out at any time 8 requested. 9 Q. Do you review legislation or 10 advocate for legislative reform? 11 A. Yes, we have done that in the past, 12 and that's through Ohio Prosecuting Attorneys 13 Association. They have a legislative committee. 14 We will a lot of times work with them on 15 different proposals that are out there. 16 Q. Do you collect, use and share data 17 that may help members of the law enforcement 18 community identify criminal trends? 19 MS. HERMIZ: Objection to form. 20 A. Specifically, I -- I can't give you 21 an answer to that one. 22 Q. Do you engage in any rehabilitation 23 or addiction support services? 24 A. We have a prosecutor assigned to 25 Turning Point, a court program, and they work in</p>
<p style="text-align: right;">Page 291</p> <p>1 not. If it's not, we applied for a different 2 one. If it's the same one, then we did not. 3 Q. Okay. So apart from that one, 4 you're not aware of any other grants -- 5 A. No. I know there was another grant 6 at one point we were talking with the Cuyahoga 7 County Prosecutor's Office on, and it was 8 something that was previously awarded to them 9 and was not anything open on, so we've been on 10 the lookout for these. 11 Q. Other than prosecutions, what 12 activities does your office engage in that 13 relate to opioid use and abuse? 14 A. Community awareness. Again, our 15 office has presented at the Ohio Prosecuting 16 Attorneys Association on this. We have provided 17 training to local law enforcement going back 18 several years on, again, how to deal with the 19 crime scenes. We presented at the National 20 District Attorneys Association up in Cleveland 21 this year, presented at the Indiana Council of 22 Prosecuting Attorneys. We have been involved in 23 presentations with the Association, I think, of 24 Attorney Generals and -- presentations there. 25 We have gone out to churches throughout the</p>	<p style="text-align: right;">Page 293</p> <p>1 that program. Our -- Doug Avery also goes over 2 and hands out mugs to the graduates of drug 3 court and wishes them well. 4 Q. What is the Turning Point program? 5 A. It is Summit County Common Pleas 6 Court's drug court program. 7 Q. Who participates in it? 8 A. Individuals who are permitted to -- 9 to join the program based upon the judges and 10 the criteria that the court has set up. 11 Q. Which prosecutor participates in the 12 Turning Point program from your office? 13 A. I believe we have two prosecutors 14 who do that. I believe Joe McAleese is one of 15 them and Colleen Sims is the other one. 16 The Turning Point program, based on 17 the volume of cases, was originally handled by 18 Judge Tom Teodosio before he went from Common 19 Pleas to the Court of Appeals. When he came 20 in -- or when he left, I believe Judge Joy 21 Oldfield took over the Turning Point program, 22 and it's since expanded to where she has a 23 program and Judge Christine Croce also has a 24 program. So we have one prosecutor assigned to 25 each one of those.</p>

<p style="text-align: right;">Page 294</p> <p>1 Q. What percentage of their working 2 hours, the prosecutors, is spent on Turning 3 Court {sic} program work? 4 A. The programs in court are at least, 5 at minimum, half a day one day a week. So off 6 the top, an easy answer to that would be 7 one-tenth of their workweek is spent in that 8 program if there's nothing that they're doing on 9 it outside of the court time. 10 Q. What percentage of the cases handled 11 by the Turning Court {sic} program involve 12 prescription opioids? 13 A. I don't have an answer for that. 14 You would have to ask the court on that. 15 Q. In the last decade has your office 16 participated in any drug task forces or 17 committees? 18 A. We are a member of the Summit County 19 Drug Unit. We are a member of the Summit County 20 Opiate Task Force. 21 Q. Who specifically at your office is a 22 member of the Summit County Drug Unit? 23 A. I attend some of those meetings. 24 Colleen Sims attends the balance of the 25 meetings.</p>	<p style="text-align: right;">Page 296</p> <p>1 Exhibit 14, 8-22-18 Board Meeting 2 Agenda Beginning Bates Number 3 SUMMIT_001468844, was marked for 4 purposes of identification.) 5 - - - - - 6 Q. I'm marking for identification 7 Exhibit 14. It's titled "August 22, '18 Board 8 Meeting Agenda." To your knowledge, is this an 9 agenda for the Summit County Drug Unit meeting? 10 A. Hold on a minute until I read it. 11 Yes, that appears to be an agenda 12 for the drug unit. 13 Q. Were you present at the August 22nd 14 board meeting? 15 A. No, I was not present, but I would 16 have received this agenda. 17 Q. How did you receive this agenda? 18 A. I don't know if Colleen Sims would 19 have given it to me or what. 20 Q. Are these agendas generally e-mailed 21 to the group? 22 A. Sometimes they e-mail them. 23 Sometimes you just get them at the meeting. 24 Q. Do you have agendas from prior 25 meetings of this group in hard copy or</p>
<p style="text-align: right;">Page 295</p> <p>1 Q. Is Colleen Sims an assistant county 2 prosecutor? 3 A. Yes, she is. 4 Q. What about the Summit County Opiate 5 Task Force? Who attends on behalf of your 6 office? 7 A. Margaret Scott was on that, and I 8 believe Angela Walls-Alexander or Brian LoPrinzi 9 will be taking that position. 10 Q. How often does the Summit County 11 Drug Unit meet? 12 A. It meets monthly, but the officers 13 in the drug unit will have different 14 conversations with us as needed. There may be 15 days -- or weeks where I might get four or five 16 calls from the drug unit. There might be weeks 17 I don't receive any calls. Prosecutors handling 18 their specific cases, their active cases, may 19 have daily contact with them. 20 Q. Is your understanding that the 21 Summit County Drug Unit's work encompasses all 22 drug crimes, not just opiate drug crimes? 23 A. Yes. 24 - - - - - 25 (Thereupon, Gessner Deposition</p>	<p style="text-align: right;">Page 297</p> <p>1 electronic format? 2 A. No. 3 Q. Why not? 4 MS. HERMIZ: Objection to form. 5 A. I do not keep the agendas from the 6 drug unit meetings. 7 Q. Have you begun to preserve the 8 agendas from this drug meeting in light of the 9 litigation hold in this case? 10 A. I believe they are maintained by the 11 Summit County Drug Unit, the sheriff which 12 oversees the drug unit. 13 Q. My question was, have you begun to 14 preserve your copies of the agenda due to the 15 litigation hold in this case? 16 A. No. I have not been attending the 17 meetings of recent and I have not been getting 18 them. 19 Q. This board meeting agenda refers 20 to -- of -- under "Financial Snapshot" refers to 21 a vote to preserve unused detective overtime 22 money for fiscal year 2018. 23 MS. HERMIZ: Objection to form. 24 Q. Do you see that? 25 A. Yes, I see that.</p>

<p style="text-align: right;">Page 298</p> <p>1 Q. And is that because not all of the 2 budgeted money for overtime was used in fiscal 3 year 2018? 4 A. That's -- it would appear that there 5 was more money allocated for overtime than was 6 spent. 7 Q. That's because police officers 8 actually worked less overtime than was 9 anticipated, correct? 10 A. Not necessarily. 11 Q. Do you know the results of the vote? 12 A. No, I don't. 13 Q. Do you know whether this has 14 occurred in prior years, this unused overtime? 15 A. I do not know. 16 Q. Has that ever occurred in your 17 office? 18 A. Has what ever occurred in our 19 office? 20 Q. In which you had unused overtime. 21 A. In our office, if there is unused 22 overtime -- again, our prosecutors are all 23 overtime exempt, our investigators are overtime 24 exempt. If there's unused overtime, it would 25 revert back to the county's general fund.</p>	<p style="text-align: right;">Page 300</p> <p>1 "ARCOS" before? 2 A. What? Excuse me. 3 Q. ARCOS, A-R-C-O-S. Have you ever 4 heard of that? 5 A. I may have. I don't -- nothing I 6 can place. 7 Q. If I told you that ARCOS was a 8 database through which distributors and 9 manufacturers report every drug transacted to 10 the DEA, would that help you determine whether 11 you had heard of it before? 12 MS. HERMIZ: Objection to form. 13 A. That would help me determine I have 14 not heard it before. 15 Q. Okay. So sitting here today, you 16 have no knowledge of the ARCOS database? 17 A. No, I do not. 18 Q. Are you familiar with the term 19 "suspicious order reports"? 20 A. In relation to what? 21 Q. In relation to prescription opioids. 22 A. No. 23 Q. Do you have -- did you ever use the 24 data available through the OARRS database we 25 discussed earlier to see if there were places in</p>
<p style="text-align: right;">Page 299</p> <p>1 Q. And then if you turn the page, this 2 agenda details drug investigations, and it lists 3 a number of drug investigations discussed at the 4 meeting. Looking at page 2, do you see it 5 mentions cases involving cocaine, crystal meth, 6 marijuana under "DEA." Then in the middle of 7 the page it refers to large meth buys, refers to 8 three meth buys. And at the bottom of the page 9 it also refers to a meth dealer in Akron. On 10 the second page it refers to marijuana in three 11 cases at the top. In the middle of the page it 12 refers to a buy bust in which confidential 13 sources purchased meth and heroin. And do you 14 see an additional five mentions of -- excuse me, 15 four mentions of meth amphetamine on that same 16 page? 17 A. Yes. 18 Q. If you turn the page, we see 19 additional mentions of meth amphetamine, 20 marijuana, and one mention -- two mentions of 21 heroin/fentanyl; is that correct? 22 A. That appears to be correct. 23 Q. You did not attend this meeting? 24 A. No, I did not. 25 Q. Have you ever heard of the phrase</p>	<p style="text-align: right;">Page 301</p> <p>1 your jurisdiction that were receiving a 2 disproportionate amount of pills? 3 MS. HERMIZ: Objection to form. 4 A. I had reviewed OARRS reports in 5 relation to criminal investigations brought to 6 us by law enforcement to support their 7 investigations in the charges they had brought 8 to us. 9 Q. Okay. Have you ever reviewed a 10 suspicious order report relating to a 11 prescription opioid? 12 A. Unless that's contained in those 13 reports and investigations, provided to our 14 office in investigations, no. 15 Q. Has the Summit County Prosecutor's 16 Office received criticism from family members or 17 others about its perceived lack of response to 18 the opioid problems in the county? 19 MS. HERMIZ: Objection to form. 20 A. Yes. 21 Q. What types of individuals have 22 expressed criticism of the office? 23 A. Parents, family members, neighbors, 24 and we receive all kind of phone calls that you 25 return and you try to give people information</p>



<p style="text-align: right;">Page 302</p> <p>1 permitted by law to give them and make them 2 aware of what's going on. 3 We're an office that has always felt 4 that -- especially victims in crimes. We 5 look -- in your typical drug case I don't think 6 there's a victim. In these heroin and 7 opiate-related deaths, you have these families 8 that had no idea what was going on, they didn't 9 expect to find grandma dead. The family with 10 the 16-year-old, who, I mean, after mom and her 11 girlfriend used drugs that night, that decided 12 to inject themselves and die in the hotel, bent 13 over in the chair while they slept it off; the 14 aunt that was raising him, she never expected to 15 be a victim there. So when she calls up and 16 says, "What's going on in this," we spend the 17 time to explain it to them. Our victim 18 advocates become involved. Again, typically in 19 a drug possession or drug trafficking case, 20 victim advocates aren't involved, but in these 21 cases they become involved. 22 Q. You mentioned your office has 23 received phone calls. Has your office also 24 received letters relating to this issue? 25 A. Not normally letters, no.</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. Are there other complaints or 2 criticisms that have been waged against your 3 office related to the opioid abuse problems? 4 A. I wouldn't say against our office, 5 but to our office, and along the lines of this 6 person is selling drugs, that person is selling 7 drugs, something needs to be done, and we make 8 sure we put them in touch with the appropriate 9 law enforcement agency to address those issues. 10 Q. Based on your experiences, what 11 weaknesses have you identified in law 12 enforcement's response to the opioid issue? 13 MS. HERMIZ: Objection to form. 14 A. If I were to say there is a weakness 15 in law enforcement, it's in lack of resources to 16 combat this. 17 Q. What specific resources would you 18 seek for your office to combat the issue? 19 A. Our office, manpower. Just like in 20 the grant, what we specifically asked for in the 21 grant, if you go through there, and see again, 22 people who can be -- be put into specifically 23 deal with this situation, to specifically 24 address these cases and these deaths, again, 25 that law enforcement can have those as</p>
<p style="text-align: right;">Page 303</p> <p>1 Q. What other mediums are used to 2 express criticism of your office relative to its 3 involvement in the opioid problems? 4 A. On these, primarily -- and I -- 5 either Prosecutor Walsh or I end up getting the 6 complaints. They've been either in person or 7 they've been on the phone. 8 Q. Okay. And how many such complaints 9 or criticisms from individuals do you receive on 10 a -- did you receive last year? 11 A. I don't keep track of those. If I 12 kept track of every complaint I received from 13 someone not happy with various aspects of the 14 justice system, I wouldn't have time to do any 15 other work. 16 Q. So you receive a large amount of -- 17 A. I receive a large amount of 18 complaints. I can tell you a portion is related 19 to the heroin and opiate -- 20 Q. And what is the nature -- what is 21 the nature of their complaints? 22 A. That no one is doing anything about 23 it. And these are typically cases where we've 24 arrested and charged someone. So it's more of a 25 they're not aware of what's being done.</p>	<p style="text-align: right;">Page 305</p> <p>1 resources, victims can have those as resources. 2 The administrative support that we would need in 3 assisting with that. The victim advocates we 4 would need in doing that. 5 Q. So when you refer to the grant, just 6 so the record is clear, we're talking about 7 Exhibit 8; is that right? 8 A. Unless there are other grants that 9 you have. That's the one you've shown me today. 10 Q. This is the one we discussed. And 11 in the grant your office proposed funding to 12 supply "two experienced prosecutors," who would 13 specialize in an opiate unit; is that right? 14 A. Right. That was, again, within the 15 parameters of that grant, but if you look 16 outside of that, you see additional -- I mean, 17 additional expenses; that there are times when 18 we need a forensic pathologist and our medical 19 examiner is overbooked on these and we can't do 20 these. 21 It was, I believe, for Dr. Dorothy 22 Dean, who was formerly in our medical examiner's 23 office, to come up and testify from Cincinnati, 24 it's \$250 an hour from when she leaves her 25 office until she returns to her office.</p>



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1 Again, resources to pay line item  
2 things; again, for expert witnesses if needed in  
3 there; for, again, the advocates that can deal  
4 with those victims. Support staff. The amount  
5 it affects our case management system. So we  
6 could have a system set up to basically spit out  
7 all of the -- the numbers and details you're  
8 asking me about. If we can have funds for that,  
9 that would be a great thing to be able to do.

10 Q. And I understand you may not be able  
11 to do everything, but what is stopping your  
12 office from taking two of your assistant county  
13 prosecutors right now and assigning them  
14 exclusively to work only on opioid issues  
15 because your office has decided that that is  
16 going to be a top priority?

17 MS. HERMIZ: Objection to form.

18 A. Well, first of all, it is a top  
19 priority in our office and it's always been, but  
20 to go to our ten judges and decide which one of  
21 them we're pulling a prosecutor or two  
22 prosecutors out of creates the first issue.

23 Looking at the caseloads in our  
24 courts, when you have prosecutors that are  
25 assigned 60 pending cases each and to say we're

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1 going to take you out of this courtroom, now you  
2 get 120 for you to go work on this -- if we take  
3 the problem with just taking two specialized  
4 prosecutors out and putting them in there that  
5 aren't working in addition to the current  
6 prosecutors, then again, those individuals now  
7 have to appear, those two people, in ten  
8 different courtrooms. If they take their case,  
9 they work their case up and indict it, they can  
10 only be in one courtroom at a time. They can't  
11 be in ten.

12 So, again, you can't pull that out  
13 of what we already have because our numbers  
14 there aren't -- if you, again, compare us to  
15 Lucas County, compare us to Montgomery County,  
16 and see the number of prosecutors each of those  
17 offices have and the number of cases compared to  
18 ours, you'll see that we're understaffed as it  
19 is.

20 Q. Are you aware that the DEA sets  
21 maximum limits on the amount of opioids that can  
22 be manufactured based on the DEA's understanding  
23 of the medical needs of the U.S. population?

24 MS. HERMIZ: Objection to form.

25 A. No, I'm not aware of that.

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1 Q. Are you aware that the DEA  
2 consistently increased those manufacture limits  
3 over the years?

4 MS. HERMIZ: Same objection.

5 A. I am not aware of that.

6 Q. In your opinion, has the DEA  
7 attacked the problem as quickly and as intensely  
8 as it should have?

9 MS. HERMIZ: Objection to form.

10 A. In the -- in the fight we have been  
11 doing against heroin and opiates, the DEA has  
12 been a willing partner of our Summit County Drug  
13 Unit and has been there to assist us whenever  
14 we've requested it.

15 Q. So, in your opinion, has the DEA  
16 attacked the opioid problem as quickly and as  
17 intensely as it should have?

18 MS. HERMIZ: Objection to form.

19 A. I can only answer for what I know,  
20 and what I know is when we've needed them,  
21 they've responded to us.

22 Q. Are there things that you know today  
23 about combating prescription drug abuse that you  
24 wish you had known ten years ago?

25 A. There are things I know today that I

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1 wish I knew a year ago. I mean, throughout --  
2 it's the practice of law. It's constant  
3 learning. So we always look to try to get  
4 better. So, I mean, absolutely there are things  
5 I know now that I wish I would have known then.

6 Q. About combating prescription drug  
7 abuse in particular?

8 A. About any -- anything, in all areas  
9 of the law.

10 Q. And what do you wish that you had  
11 known about prescription drug abuse in Summit  
12 County ten years ago?

13 A. I wish I would have known that we  
14 needed to educate people ten years ago on how  
15 these prescription drugs are going to hook them  
16 and how they're not going to be able to afford  
17 to continue using those, and they're going to  
18 get addicted to them and they're going to be  
19 then looking for heroin out on a street corner  
20 and you have a 67-year-old woman found laying on  
21 her bed with a syringe next to her, you have a  
22 16-year-old boy laying backward over a chair in  
23 a hotel room. Again, I wish we knew enough to  
24 educate those people before they ended up  
25 killing themselves.

<p style="text-align: right;">Page 310</p> <p>1 Q. Other than increasing public 2 awareness, what other things do you wish you had 3 known ten years ago relating to prescription 4 drug abuse? 5 A. That maybe the people putting these 6 things on the market would have stepped up to 7 stop the problem. 8 Q. Well, let's talk about that. In 9 your 2018 budget, we read that one of your goals 10 is to collaborate with community partners 11 regarding the fentanyl and heroin epidemic, 12 correct? 13 A. That would actually be to continue 14 to collaborate, because with the Summit County 15 Drug Unit and the Summit County Heroin Task 16 Force we've been collaborating. 17 Q. So what efforts does your office 18 undertake to collaborate with pharmaceutical 19 drug distributors like my client, McKesson? 20 MS. HERMIZ: Objection to form. 21 A. I don't know who your client is, as 22 I told you, so maybe had they attempted to 23 collaborate with us, we would have been willing 24 partners. 25 Q. So you didn't know who McKesson</p>	<p style="text-align: right;">Page 312</p> <p>1 across America and that its sales from opioids 2 is less than 2 percent? 3 MS. HERMIZ: Objection to form. 4 A. No, I don't, and I don't even know 5 what that 2 percent would be. 6 Q. Do you have a personal belief as to 7 whether McKesson is responsible for the opioid 8 abuse that has occurred in Summit County? 9 MS. HERMIZ: Objection to form. 10 A. I think anyone who has contributed 11 to the problem is at fault. 12 Q. And do you have any evidence or 13 basis to conclude that McKesson Corporation, in 14 particular, has contributed to the opioid abuse 15 problem? 16 A. If you take the opioids they're 17 producing and distributing out of the mix, then 18 you don't have the problem you have with them in 19 the mix. That would be my opinion. 20 Q. Do you understand my client doesn't 21 produce opioids? 22 MS. HERMIZ: Objection to form. 23 A. They distribute them. 24 Q. That's right. 25 A. Yes. So you take them out of the</p>
<p style="text-align: right;">Page 311</p> <p>1 Corporation was before this litigation? 2 A. I didn't know until you just told 3 me. 4 Q. So are you aware of the role that 5 pharmaceutical distributors play in the 6 healthcare supply chain? 7 MS. HERMIZ: Objection to form. 8 A. They supply pharmaceuticals. 9 Q. McKesson is an 185-year-old American 10 company that employs approximately 78,000 people 11 both in Ohio and across the country, and its job 12 is to make sure that patients get prescription 13 medicine that they need, sometimes for 14 life-threatening illnesses, in a timely 15 fashion -- 16 MS. HERMIZ: Objection to form. 17 Q. -- even in hard-to-reach places in 18 America. 19 Did you know the nature of 20 McKesson's business prior to this litigation? 21 MS. HERMIZ: Objection to form. 22 A. As I said, no. 23 Q. Are you aware that my client 24 delivers tens of thousands of different types of 25 medicine to more than 40,000 pharmacy customers</p>	<p style="text-align: right;">Page 313</p> <p>1 mix, then they're not part of that problem. 2 Q. Okay. But you understand that 3 prescription opioids have a lawful -- are 4 lawful, correct, if prescribed -- I'm sorry, if 5 obtained pursuant to a medical prescription? 6 MS. HERMIZ: Objection to form. 7 A. Yes. They may be lawfully possessed 8 and used. 9 Q. In fact, they're used to treat 10 chronic pain and to comfort people near the end 11 of their life, correct? 12 MS. HERMIZ: Objection to form. 13 A. Yes. As I said, from our hospice 14 case, we saw where they were diverted, to use 15 your word, from the person who needed them for 16 the end of their life and the pain by the 17 addicted nurse. 18 Q. But you don't disagree that people 19 in pain deserve to have their pain treated, 20 correct? 21 MS. HERMIZ: Objection to form. 22 A. They deserve to have their pain 23 treated and they deserve to be taken care of. 24 Q. Do you agree with me that it would 25 be tragic to keep prescription opioids from</p>

<p style="text-align: right;">Page 314</p> <p>1 patients who have legitimate medical needs for 2 that medicine?</p> <p>3 MS. HERMIZ: Objection to form.</p> <p>4 A. The legitimate medical needs, 5 absolutely. The point that the opiate addicts 6 the individual maybe is where we've failed.</p> <p>7 Q. Did your office ever coordinate with 8 any state or federal law enforcement agencies to 9 address any opioid-related issues?</p> <p>10 A. We have done the local, again, with 11 the Summit County Heroin Task Force. State 12 agencies, I'm sure we have had discussions at 13 different times with the Ohio Attorney General's 14 Office. Federal, the application you have right 15 there for the grant.</p> <p>16 Those would be, I think, some of our 17 attempts.</p> <p>18 Q. To what extent do you coordinate 19 with the medical examiner?</p> <p>20 A. To the extent of if there's a dead 21 body in Summit County and it wasn't a natural 22 death and there's someone that led to that 23 person's death, we will consult with the medical 24 examiner, and ultimately if there are charges, 25 use the medical examiner as our witness as to</p>	<p style="text-align: right;">Page 316</p> <p>1 heroin summits convened by the U.S. Attorney's 2 Office starting in 2013?</p> <p>3 A. I -- there's some courses I think we 4 went to. I don't know if we've been to all of 5 them.</p> <p>6 Q. Has your office been involved in the 7 U.S. Attorney's Heroin and Opiate Task Force 8 that was formed in 2013?</p> <p>9 A. I don't think so.</p> <p>10 Q. Did your office participate in the 11 Akron Roundtable held by the U.S. Attorney in 12 June of 2014?</p> <p>13 A. I don't know. I'm thinking that 14 Margaret Scott may have been at that. I don't 15 know.</p> <p>16 Q. When you suspect that a doctor or a 17 pharmacist was involved in diversion, to whom do 18 you report it?</p> <p>19 MS. HERMIZ: Objection to form.</p> <p>20 A. First of all, we don't suspect. Law 21 enforcement suspects. They bring cases to us 22 they've investigated. So -- and if they're 23 looking at the pharmacist and that -- when they 24 bring those cases to us, they've already advised 25 the pharmacy board of that. They're usually</p>
<p style="text-align: right;">Page 315</p> <p>1 the cause of death, the method and manners of 2 the death.</p> <p>3 Q. Has your office designated 4 prosecutors to work jointly with the U.S. 5 Attorney's Office on drug trafficking cases?</p> <p>6 A. Not jointly with them, but we work 7 with the U.S. Attorney's Office. We consult 8 with them. There are cases that we have that 9 have both concurrent jurisdictions, that we 10 will, again, look and see at times where -- in 11 most cases, where they are being -- or able to 12 get tougher sentences than we are, and we 13 will -- once they have the case in process, we 14 will dismiss our case.</p> <p>15 Q. Are you aware that Trumbull County 16 has designated prosecutors to work jointly with 17 the U.S. Attorney?</p> <p>18 A. Yes, in Trumbull County, and 19 Mr. Watkins there has a little bit more latitude 20 in his staff than we have in ours. We've 21 actually talked to the U.S. Attorney's Office 22 about that program and said if we had an 23 increase in manpower, we would be interested in 24 doing that.</p> <p>25 Q. Has your office participated in the</p>	<p style="text-align: right;">Page 317</p> <p>1 working hand in hand with the pharmacy board on 2 that. So when we take it, we report it to the 3 Grand Jury and usually come out with an 4 indictment, if that's the type of --</p> <p>5 Q. So it sounds like you rely on law 6 enforcement to make notices to the board of 7 pharmacies or others, that you do not report 8 criminal wrongdoing of pharmacies or doctors to 9 other entities?</p> <p>10 MS. HERMIZ: Objection to form.</p> <p>11 A. If there are convictions, we do the 12 state reports.</p> <p>13 Q. And who do you do the state reports 14 to?</p> <p>15 A. The Pharmacy Board, the State 16 Medical Board. We also, in some cases, report 17 to the Ohio Department of Education, if it's a 18 teacher involved.</p> <p>19 Q. You wait until there's a conviction 20 to make those reports; is that right?</p> <p>21 A. That's what we're required to do is 22 report a conviction.</p> <p>23 Q. Do you make a report about a doctor 24 or pharmacy engaged in criminal wrongdoing 25 related to opioids to the DEA?</p>

<p style="text-align: right;">Page 318</p> <p>1 A. No.</p> <p>2 Q. Do you make such a report to the</p> <p>3 pharmaceutical distributor?</p> <p>4 MS. HERMIZ: Objection to form.</p> <p>5 A. No. The state requires that we</p> <p>6 notify the State Medical Board or the State</p> <p>7 Board of Pharmacy, again, or the Department of</p> <p>8 Education if a teacher is involved, the</p> <p>9 Department of Nursing if a nurse is involved.</p> <p>10 We have made reports to the state nursing boards</p> <p>11 on the nurse in the nursing home who was -- the</p> <p>12 hospice, who was taking the pain medication.</p> <p>13 That was reported.</p> <p>14 Q. But it was not reported to a</p> <p>15 pharmaceutical distributor, was it, by your</p> <p>16 office?</p> <p>17 A. I don't think in the course of the</p> <p>18 investigation we were told who the</p> <p>19 pharmaceutical distributor was, and I've never</p> <p>20 received a call from a pharmaceutical</p> <p>21 distributor asking us if there are any cases</p> <p>22 involving any of their drugs either.</p> <p>23 Q. Did you notify any third-party</p> <p>24 payers or pharmacy benefit managers when you</p> <p>25 uncovered criminal activity conducted by a</p>	<p style="text-align: right;">Page 320</p> <p>1 funding it, is that correct, from its own</p> <p>2 budget?</p> <p>3 A. No.</p> <p>4 Q. That is correct?</p> <p>5 A. I am not aware that our office funds</p> <p>6 it.</p> <p>7 Q. Prior to this litigation, did your</p> <p>8 office ever communicate with the DEA concerning</p> <p>9 any pharmacy improperly supplying prescription</p> <p>10 opioids to Summit residents?</p> <p>11 MS. HERMIZ: Objection to form.</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. What about regarding pill mills?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Did you have any communication on</p> <p>16 any other subject with the DEA regarding</p> <p>17 prescription opioids?</p> <p>18 MS. HERMIZ: Objection to form.</p> <p>19 A. Not that I'm aware of, unless it was</p> <p>20 in the course of an ongoing investigation or an</p> <p>21 investigation they were presenting to us.</p> <p>22 Q. How many such -- how much such</p> <p>23 investigations have you discussed with the DEA?</p> <p>24 A. I don't know.</p> <p>25 Q. Is it possible it's zero?</p>
<p style="text-align: right;">Page 319</p> <p>1 pharmacist or a doctor?</p> <p>2 MS. HERMIZ: Objection to form.</p> <p>3 A. No, we have not, but the state -- or</p> <p>4 the insurance companies, if there's a suspected</p> <p>5 arson, they will send to our office a</p> <p>6 notification to us of who we should get in</p> <p>7 contact with, when we should get in contact, and</p> <p>8 what information they would need should we get a</p> <p>9 conviction. We've never received anything from</p> <p>10 any of those other providers that you have asked</p> <p>11 me about, just the insurance companies on the</p> <p>12 arsons.</p> <p>13 Q. Are you familiar with the term</p> <p>14 "HIDTA"?</p> <p>15 A. Yes.</p> <p>16 Q. What does that mean?</p> <p>17 A. It is the group that funds or helps</p> <p>18 assist fund the Summit County Drug Unit.</p> <p>19 Q. Has your office participated in the</p> <p>20 Ohio HIDTA?</p> <p>21 A. We have participated as to our</p> <p>22 involvement in the Summit County Drug Unit.</p> <p>23 Q. Do you know who funds this effort?</p> <p>24 A. I believe the DEA funds that.</p> <p>25 Q. Your office is not responsible for</p>	<p style="text-align: right;">Page 321</p> <p>1 A. It's possible.</p> <p>2 Q. Did the DEA ever share any tips with</p> <p>3 you and alert you to potentially unlawful</p> <p>4 conduct regarding opioids?</p> <p>5 MS. HERMIZ: Objection to form.</p> <p>6 A. The DEA would report that to the</p> <p>7 Summit County Drug Unit, not to our office.</p> <p>8 Q. So the DEA never shared any tips</p> <p>9 directly with your office or alerted your office</p> <p>10 to --</p> <p>11 A. Not directly.</p> <p>12 MS. WOODS: Let's take a break and</p> <p>13 go off the record.</p> <p>14 THE VIDEOGRAPHER: Off the record at</p> <p>15 5:32.</p> <p>16 (Recess had.)</p> <p>17 THE VIDEOGRAPHER: On the record,</p> <p>18 5:54.</p> <p>19 BY MS. WOODS:</p> <p>20 Q. Mr. Gessner, are you aware of an</p> <p>21 effort within your office to consolidate all</p> <p>22 drug cases into an Excel spreadsheet?</p> <p>23 MS. HERMIZ: Objection to form.</p> <p>24 A. No, I'm not.</p> <p>25 - - - - -</p>



<p style="text-align: right;">Page 322</p> <p>1 (Thereupon, Gessner Deposition 2 Exhibit 15, Abbreviated Excel 3 Spreadsheet, was marked for purposes 4 of identification.) 5 - - - - - 6 Q. I'm handing you what's been marked 7 as Exhibit 15. It's an abbreviation of an Excel 8 sheet that was produced to us in native format 9 that contained three tabs, the first one being 10 code, which is shown in the first three pages 11 under the tab called "Code," and then the other 12 two tabs were named "One Defendant Per Row" and 13 "One Case Per Row" and contain data similar to 14 the data you see in pages 4, 5 and 6 of Exhibit 15 15. 16 Based on your review of Exhibit 15, 17 are you familiar with a spreadsheet -- with this 18 spreadsheet? 19 A. No. 20 Q. Do you have any idea about who may 21 have created Exhibit 15? 22 MS. HERMIZ: Objection to form. 23 A. My guess would be Brett Lawrence. 24 Q. Who is Brett Lawrence? 25 A. Our IT director.</p>	<p style="text-align: right;">Page 324</p> <p>1 So, again, some of these drugs that 2 had specific penalties you would indict with the 3 name of the offense in the charge; others you 4 would not. So it just shows on, looks like, 5 whatever is dumped, so there's no way to search 6 a particular drug unless you're looking for, it 7 looks like, the cocaine or the marijuana or the 8 meth on these. 9 Q. Based on your understanding of 10 Exhibit 15, there would be no way to search to 11 determine which cases involve prescription 12 opioids, for example? 13 A. That's my guess. It's not -- not 14 anything else. 15 Q. And, in fact, some of the crimes -- 16 excuse me, some of the charges listed on Exhibit 17 15 refer generally to drugs and do not specify 18 the type of drug? 19 A. That's correct. 20 MS. WOODS: Thanks. Let's take a 21 break so that we can switch places. 22 THE VIDEOGRAPHER: Off the record 23 (Short recess had.) 24 THE VIDEOGRAPHER: On the record, 25 6:00.</p>
<p style="text-align: right;">Page 323</p> <p>1 Q. The note on page 1 of Exhibit 15 2 reads, "Highlighted charges are those migrated 3 from COPS where there is no way to determine on 4 their face whether or not they are referencing 5 the targeted opioid-related charges." 6 What do you understand that comment 7 to mean? 8 MS. HERMIZ: Objection to form. 9 A. My best guess on that would be when 10 we took or started the Matrix case management 11 system, they tried to import all of the old COPS 12 cases into it, and basically they are just 13 showing up as what they are -- if you look at 14 the back pages there, in the -- none in 15 particular, but you see there CR 2005, CR 2006. 16 Those would be 2005 and 2006 cases. Again, 17 they're showing possession of cocaine as 18 something -- showing crack, showing meth 19 amphetamine on there, but again, I don't know -- 20 some of them are just aggravated trafficking in 21 drugs, aggravated possession of drugs. So it 22 looks like crack -- and crack and cocaine, at 23 the time it would have made sense for them to 24 both be shown because there were different 25 penalties for them.</p>	<p style="text-align: right;">Page 325</p> <p>1 EXAMINATION OF BRAD GESSNER 2 BY MS. RENDON: 3 Q. Mr. Gessner, as I mentioned this 4 morning, my name is Carole Rendon. I represent 5 the Endo Defendants in this litigation. I have 6 just a very small handful of questions for you. 7 So you were just talking about a 8 spreadsheet and whether or not we could use the 9 spreadsheet to identify opioid cases, and it 10 appears that we cannot; is that correct? 11 A. That's my understanding. Again, 12 this document I have never seen before. 13 Q. Did your office at some point in 14 time start a policy of trying to designate cases 15 with an opioid stamp so that you would be better 16 able to determine which cases were opioid cases 17 and which were not? 18 MS. HERMIZ: Objection to form. 19 A. I don't believe -- when you say 20 "stamp," I don't believe it's a physical stamp. 21 I think it may be a stamp -- a digital stamp in 22 the Matrix system. So since we went into the 23 Matrix system, that that now has cases that 24 are -- since I -- well, March of 2018 is when 25 Matrix began, and we've been continuing to tweak</p>



<p style="text-align: right;">Page 326</p> <p>1 it ever since. Somewhere between March and the 2 current date we've gone in and added the stamp 3 to the program again, stamp meaning its 4 classification within Matrix, not an ink stamp. 5 Q. So it's like a digital reference 6 point so that you can identify opioid-related 7 cases? 8 A. Yes. I think that was the intent. 9 Whether or not that has been done, I don't -- 10 and is working, I don't know that. That's 11 something Brett Lawrence would be the person to 12 answer. 13 Q. And are there any other types of 14 cases that have a similar digital signature in 15 the Matrix system? In other words, do you have 16 a meth amphetamine digital stamp, for example? 17 A. No. I believe we have domestic 18 violence. I believe we have gun-related stamps. 19 I'm not sure of all of those stamps. Since I'm 20 not working on an active caseload, I don't have 21 that daily connection to it. 22 Q. What is the purpose of identifying 23 specifically opioid cases versus any other type 24 of drug case in the Matrix system? 25 A. Basically this lawsuit, so we could</p>	<p style="text-align: right;">Page 328</p> <p>1 allowed you to do that easily; is that correct? 2 A. In the COPS system, there was no way 3 to do that. 4 Q. But you could have had a system -- 5 systems exist like the Matrix system -- where 6 you can identify various types of drugs, you 7 just didn't have that kind of a system; is that 8 correct? 9 MS. HERMIZ: Objection to form. 10 A. Right. We were promised a new case 11 management system by county council in 2007, so 12 in 2018 we received it, so for 11 years we were 13 on life support there. 14 - - - - - 15 (Thereupon, Gessner Deposition 16 Exhibit 16, E-Mail String Bates 17 Numbered SUMMIT_001506659, was 18 marked for purposes of 19 identification.) 20 - - - - - 21 Q. Let me just very quickly show you 22 what I'm marking as Exhibit 16 for your 23 deposition. That's an e-mail exchange from 24 Megan Bogavich to you dated May 10th of 2018; is 25 that correct?</p>
<p style="text-align: right;">Page 327</p> <p>1 track them easier, from this point going 2 forward. 3 Q. And does the stamp in the Matrix 4 system differentiate between cases that involve 5 prescription opioids versus illicit opioids? 6 A. I do not know that answer. 7 Q. Who would know that answer? 8 A. Brett Lawrence. 9 Q. Who is responsible for designating 10 the documents for adding this digital stamp in 11 the Matrix system? 12 A. I would believe, if it's working and 13 in effect, the Grand Jury prosecutors, and if 14 for any reason that they failed to do that, the 15 courtroom prosecutor upon receipt. That's the 16 difference with our COPS system and the Matrix 17 system. COPS was something that once it was set 18 up, it couldn't be altered or changed. This 19 system you can adapt. It keeps track of 20 anything done to it and when it was and by whom 21 it was done, so there are always the ongoing and 22 updated versions in it. 23 Q. So it's not that it was impossible 24 to keep track of opioid cases versus non-opioid 25 cases, it's just you didn't have a system that</p>	<p style="text-align: right;">Page 329</p> <p>1 A. That's what it appears to be. 2 Q. And she's asking you to make sure 3 the Grand Jury prosecutors are putting the 4 "opioid" stamp on any case indicted for 5 possession, trafficking or corrupting with 6 heroin, carfentanil or fentanyl, correct? 7 A. Yes. 8 Q. And there's no reference to 9 prescription opioids in her e-mail, is there? 10 A. Not in her e-mail or my e-mail, 11 which forwards it on to the Grand Jury 12 prosecutors. So I was correct that it was 13 something to be added by the Grand Jury 14 prosecutors. 15 Q. In your e-mail forwarding it on to 16 the Grand Jury prosecutors, what is it you said 17 to them in all capitals? 18 A. And all capitals were primarily for 19 one of the individuals there. So "When doing 20 screening or Grand Jury, please add the opioid 21 stamp to any heroin, carfentanil or fentanyl 22 case" and, again, if you see down there, Megan 23 did say that was to make gathering statistics 24 easier. 25 Q. And that would be statistics with</p>

<p style="text-align: right;">Page 330</p> <p>1 respect to how many cases you're charging that  2 involve heroin, carfentanil or fentanyl; is that  3 correct?  4 A. Yes.  5 Q. You were asked earlier about a  6 roundtable and you said you couldn't recall  7 whether or not your office had attended the  8 roundtable; is that correct?  9 A. Yes.  10 - - - - -  11 (Thereupon, Gessner Deposition  12 Exhibit 17, E-Mail String Bates  13 Numbered SUMMIT_001468903, was  14 marked for purposes of  15 identification.)  16 - - - - -  17 Q. I'm going to show you what I'm  18 marking as Exhibit 17 for your deposition, and  19 I'll ask you to take a look at it and tell me if  20 this refreshes your recollection as to whether  21 or not your office attended the roundtable.  22 A. Okay. What I was asked was a  23 question of were we -- did we attend a  24 conference or a roundtable organized by the U.S.  25 Attorney's Office, I believe was the question.</p>	<p style="text-align: right;">Page 332</p> <p>1 attended this on behalf of the office, find out  2 -- so John -- most likely that's what happened,  3 and John looked and said we weren't -- and so  4 this committee that the mayor had that we  5 weren't invited to, and that was to talk about  6 how to deal with youth violence in Akron, so  7 then John responded saying there was an opiate  8 roundtable that we were not included on.  9 Q. Who is Jerry Craig?  10 A. I'm at a loss. He is -- he is --  11 it's not the health department.  12 Q. Are you familiar with the Summit  13 County ADMs Board?  14 A. Yes. ADM Board, yes.  15 Q. And does that --  16 A. I believe so.  17 Q. Do you believe that Jerry Craig is  18 associated with the ADMs Board of Summit County?  19 A. Yes.  20 Q. And do you know when he held the  21 opioid roundtable?  22 A. No, I don't. The only thing I have  23 about the opioid roundtable is what's in this  24 e-mail.  25 Q. So you don't know who was there?</p>
<p style="text-align: right;">Page 331</p> <p>1 This was an -- and I still would not make a  2 connection between this document and the U.S.  3 Attorney's Office. This was -- the mayor had a  4 committee on youth violence that we were not  5 included on or advised of, on this, and I then  6 contacted, it looks like, Tamiyka Rose in the  7 mayor's office at some point prior to this  8 e-mail, because it has "Hello Brad, per your  9 request, the draft plan is attached." We read  10 about this in the newspaper. We had not  11 received any notification on it. We were not  12 invited. Tamiyka confirmed to me, yes, you were  13 not invited, is it something you would want to  14 be involved in, and then John Galonski responded  15 to me, saying there was another opioid  16 roundtable that Jerry Craig had and we were not  17 included on.  18 Q. Were you aware of the opioid  19 roundtable that Jerry Craig hosted before you  20 saw this e-mail from John Galonski?  21 A. We may have had some discussions  22 from John Galonski after it on what -- I mean,  23 our office is very active in the community, so  24 if something would come up and be in the  25 newspaper or the prosecutor would say who</p>	<p style="text-align: right;">Page 333</p> <p>1 A. No.  2 Q. Don't know what the topics of  3 conversation were?  4 A. No.  5 Q. Do you know why the Summit County  6 Prosecutor's Office was excluded from an opioid  7 roundtable being hosted by Jerry Craig and the  8 Summit County ADMs Board?  9 A. No, I do not.  10 Q. After you received this e-mail, did  11 you reach out to Jerry Craig to find out what  12 the roundtable was?  13 A. No. I believe John may have  14 communicated with Jerry Craig. John is the  15 chief of our civil division and he has a lot of  16 communication with the ADM Board. I believe he  17 would have done that, if anyone would have.  18 Q. Did you ever talk to John and ask  19 him to reach out to Jerry Craig?  20 A. No, not on that, because at that  21 point I was focused on what was in the mayor's  22 committee against -- on youth violence was  23 something that was -- something I was looking  24 into. So as far as that, John, I believe,  25 talked to Jerry and -- I would guess talked to</p>

<p style="text-align: right;">Page 334</p> <p>1 Jerry on that.</p> <p>2 Q. But you don't know whether or not he</p> <p>3 talked to Jerry?</p> <p>4 A. No. And I have no idea how long</p> <p>5 after or when Jerry's meeting was or that. So,</p> <p>6 again, with the volume of work we have in the</p> <p>7 office, you usually don't always have the luxury</p> <p>8 of going backwards and saying, okay, wait, when</p> <p>9 was this meeting, why weren't we invited, what</p> <p>10 was the subject of it. Again, we're on the</p> <p>11 Summit County Heroin Task Force. Margaret Scott</p> <p>12 was assigned to that. I believe there are</p> <p>13 representatives from the ADM Board on that. So</p> <p>14 my idea -- other people are dealing with that.</p> <p>15 Q. So I'm just trying to ask you a very</p> <p>16 simple question. Did you ever have a</p> <p>17 conversation with John Galonski in which he</p> <p>18 reported to you having spoken with Jerry Craig</p> <p>19 and found out anything about the opioid</p> <p>20 roundtable?</p> <p>21 A. No.</p> <p>22 Q. So when you say you think John</p> <p>23 talked to him, that's just pure speculation on</p> <p>24 your part?</p> <p>25 A. Yes. John talks to everybody.</p>	<p style="text-align: right;">Page 336</p> <p>1 A. Yes.</p> <p>2 Q. And that's true whether the fentanyl</p> <p>3 is laced in with heroin or laced in with</p> <p>4 cocaine?</p> <p>5 A. Absolutely.</p> <p>6 Q. Do you know whether or not these</p> <p>7 test strips ever came to Summit County?</p> <p>8 MS. HERMIZ: Objection to form.</p> <p>9 A. Off the top of my head, no, I do</p> <p>10 not.</p> <p>11 Q. But they would be a useful tool for</p> <p>12 people to use to make sure -- to help prevent</p> <p>13 overdose deaths; is that correct?</p> <p>14 MS. HERMIZ: Objection to form.</p> <p>15 A. Provided our drug users are</p> <p>16 organized enough to have them and use them, yes,</p> <p>17 they could do that.</p> <p>18 - - - - -</p> <p>19 (Thereupon, Gessner Deposition</p> <p>20 Exhibit 18, E-Mail from Melanie Hart</p> <p>21 dated July 16, 2018, with</p> <p>22 Attachment, Beginning Bates Number</p> <p>23 SUMMIT_001011252, was marked for</p> <p>24 purposes of identification.)</p> <p>25 - - - - -</p>
<p style="text-align: right;">Page 335</p> <p>1 Q. But you have no idea whether or not</p> <p>2 he talked to Jerry Craig about this subject?</p> <p>3 A. No.</p> <p>4 Q. Are you familiar with test strips</p> <p>5 that can be used to test drugs to see whether or</p> <p>6 not they have fentanyl in them?</p> <p>7 A. Test -- preliminary testing?</p> <p>8 Q. Yes.</p> <p>9 A. Yes, I've heard of them.</p> <p>10 Q. So you know that there are these</p> <p>11 test strips that are available, and one of the</p> <p>12 ways that they can be used is by drug users to</p> <p>13 determine whether or not the heroin they're</p> <p>14 about to use might be laced with fentanyl,</p> <p>15 correct?</p> <p>16 A. Right, and I believe the health</p> <p>17 department was working on getting those to pass</p> <p>18 out or distribute those.</p> <p>19 Q. And why is that important?</p> <p>20 A. We don't want people dying.</p> <p>21 Q. And when your drugs that you're</p> <p>22 buying on the street, which are illegal to begin</p> <p>23 with, are laced with fentanyl, it increases the</p> <p>24 likelihood that you're going to overdose and</p> <p>25 die; is that correct?</p>	<p style="text-align: right;">Page 337</p> <p>1 Q. I'm going to show you what has been</p> <p>2 marked as Exhibit 18 for your deposition.</p> <p>3 Before you spend too much time reading the</p> <p>4 article, I would like to ask you a preliminary</p> <p>5 question on page 1, the e-mail.</p> <p>6 A. Yes.</p> <p>7 Q. Is that an e-mail that you would</p> <p>8 have received?</p> <p>9 A. It's an e-mail I would have had sent</p> <p>10 out to the office.</p> <p>11 Q. Okay. So then my second question</p> <p>12 is, having glanced at the article, do you recall</p> <p>13 this newspaper article?</p> <p>14 A. Yes. I would recall having reviewed</p> <p>15 this, and our office sends out news clips of</p> <p>16 issues of interest to -- to the office of what</p> <p>17 has been in the local media, and we do that, and</p> <p>18 there for a while there were several sent out</p> <p>19 under either opiate news or news, opiate crimes.</p> <p>20 Q. In the newspaper article that you</p> <p>21 had sent out to the office -- this is from the</p> <p>22 Akron Beacon Journal from July 14th of 2018 --</p> <p>23 there's a discussion with respect to the fact</p> <p>24 that these test strips, fentanyl test strips,</p> <p>25 are now available in Summit County; is that</p>

<p style="text-align: right;">Page 338</p> <p>1 correct?</p> <p>2 A. That's what it says, yes.</p> <p>3 Q. And did you view that as a positive</p> <p>4 development to help avoid unintended overdose</p> <p>5 deaths?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Do you have any idea who covered the</p> <p>8 cost of the fentanyl test strips?</p> <p>9 A. I did not see that in the article,</p> <p>10 so I would not know.</p> <p>11 Q. If I could direct your attention to</p> <p>12 the second page of the article. It's Bates</p> <p>13 number, at the bottom, SUMMIT 11254.</p> <p>14 A. Okay.</p> <p>15 Q. It's the fourth full paragraph from</p> <p>16 the bottom. It reads, "The fentanyl test</p> <p>17 strips, which cost about a dollar each, are</p> <p>18 being paid for by Summit County Public Health</p> <p>19 and the ADM Board as part of an evolving plan to</p> <p>20 help save drug users' lives."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And do you have any information that</p> <p>24 would cause you to disagree with the reporter's</p> <p>25 understanding of the cost of the test strips?</p>	<p style="text-align: right;">Page 340</p> <p>1 A. Well, I don't know if she was</p> <p>2 collecting case files. She was designated with</p> <p>3 the office to coordinate any information that</p> <p>4 was needed through the request for discovery.</p> <p>5 Q. Who designated her?</p> <p>6 A. The office designated her.</p> <p>7 Q. What human being in the office?</p> <p>8 A. Sherri Bevan Walsh.</p> <p>9 Q. You indicated a number of times</p> <p>10 today that the only way to determine whether</p> <p>11 cases your office prosecuted involved opioids is</p> <p>12 to actually look at the case file; is that</p> <p>13 correct?</p> <p>14 A. Unless they have the opiate stamp</p> <p>15 that is added to it now.</p> <p>16 Q. And that would apply only to cases</p> <p>17 in calendar year -- the latter part of calendar</p> <p>18 year 2018, correct?</p> <p>19 A. Yes.</p> <p>20 Q. So prior to that, the only way to</p> <p>21 determine whether or not any case involved an</p> <p>22 opioid is to actually look at the case file; is</p> <p>23 that correct?</p> <p>24 A. Unless a prosecutor says, here, this</p> <p>25 is a case, I have it and I'm working on it, or I</p>
<p style="text-align: right;">Page 339</p> <p>1 MS. HERMIZ: Objection to form.</p> <p>2 A. I have no knowledge of this other</p> <p>3 than what you've just pointed out in this</p> <p>4 article.</p> <p>5 Q. Were these test strips being paid</p> <p>6 for in any fashion by your budget?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Have you seen a positive benefit as</p> <p>9 a result of these test strips being available in</p> <p>10 terms of the rate of overdose deaths in Summit</p> <p>11 County?</p> <p>12 MS. HERMIZ: Objection to form.</p> <p>13 A. I have not received any reports on</p> <p>14 the success or failure of these programs.</p> <p>15 Q. Have you done anything to seek</p> <p>16 information regarding the success or failure of</p> <p>17 the test strip program?</p> <p>18 A. The prosecutor's office has not done</p> <p>19 any follow-up on this.</p> <p>20 Q. Earlier today you were talking about</p> <p>21 the production of case files, and I believe that</p> <p>22 you mentioned that Merritt Hannah in your</p> <p>23 office --</p> <p>24 A. Yes.</p> <p>25 Q. -- was collecting case files?</p>	<p style="text-align: right;">Page 341</p> <p>1 know this case is, yes.</p> <p>2 Q. And that would be true, then, even</p> <p>3 more specifically, if you wanted to find cases</p> <p>4 that involved prescription opioids, you would</p> <p>5 have to look at the case files themselves?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any idea how many case</p> <p>8 files have been produced in response to the</p> <p>9 Defendants' document request to Summit County?</p> <p>10 A. No.</p> <p>11 Q. Do you have any idea whether or not</p> <p>12 that production was complete?</p> <p>13 MS. HERMIZ: Objection to form.</p> <p>14 A. I did not participate in that</p> <p>15 production.</p> <p>16 Q. If I told you that we had only</p> <p>17 received approximately 55 case files, would that</p> <p>18 number seem low to you in terms of the number of</p> <p>19 cases you've prosecuted in the last ten years</p> <p>20 that involve opioids?</p> <p>21 MS. HERMIZ: Objection to form.</p> <p>22 A. I don't know the parameters of the</p> <p>23 search or the request, so I can't give you an</p> <p>24 opinion on 55 without knowing specifically what</p> <p>25 was asked.</p>




<p style="text-align: right;">Page 342</p> <p>1 Q. Do you think from 2006 to the 2 present your office has prosecuted more than 55 3 cases that involve opioids? 4 MS. HERMIZ: Objection to form. 5 A. According to the article we had, 6 there were 500 times where people were charged 7 with heroin. I don't know the specifics as to 8 any other opiates. 9 Q. So you believe there are at least 10 500 case files that involved prosecutions for 11 heroin; is that correct? 12 A. In that one year, that's what our 13 article said. 14 Q. And you have no reason to think that 15 that's incorrect? 16 A. No. 17 Q. Earlier today you made mention of 18 some teenagers who had overdosed. It was 19 something that you had seen on Facebook. Do you 20 recall that testimony from earlier this morning? 21 A. Yes. 22 Q. Was that an event that happened here 23 in Summit County? 24 A. No. 25 Q. Do you know where those teenagers</p>	<p style="text-align: right;">Page 344</p> <p>1 sir? 2 A. I hope not. 3 Q. Do you remember anything else about 4 the -- that Facebook posting that would allow us 5 to try and identify it and find it? 6 A. It was probably two to three weeks 7 ago. It was a photograph with young -- a young 8 man was -- his photo was in it. He was blond. 9 I can tell you that just in the picture. The 10 mother said he and another friend from college 11 had these Percocets. She was not aware of it. 12 The next morning she went to wake them. They 13 were both dead at the time. 14 Q. And by "these Percocets," you mean 15 the Percocets that were laced with fentanyl? 16 A. Yes. 17 Q. And this was something that appeared 18 on your Facebook feed in some fashion -- 19 A. Yes. 20 Q. -- or did you go out searching for 21 it? 22 A. No. It appeared on my feed. 23 MS. RENDON: So I have no further 24 questions at the moment. 25 On behalf of both -- on behalf of</p>
<p style="text-align: right;">Page 343</p> <p>1 were who overdosed? 2 A. The article did not have where they 3 were, but having a 17-year-old and 20-year-old, 4 when I see something like that, it rings a bell 5 -- I mean, you look at that and you'll pay 6 attention to that, and it's the nature of what 7 happened, not the location of what happened, 8 that was the importance to me. 9 Q. But you know that that wasn't an 10 event that took place here in Summit County; is 11 that correct? 12 MS. HERMIZ: Objection to form. 13 A. Yes, that's correct. 14 Q. And as I understood your testimony 15 from earlier today, it was your memory from 16 looking at this Facebook article that these 17 teenagers had died from taking Percocet that was 18 laced with fentanyl; is that correct? 19 A. That's what the article said. 20 Q. And that's not how Percocet is 21 manufactured; it's not laced with fentanyl when 22 it's manufactured, correct? 23 A. Depends on where it's manufactured. 24 Q. The Percocet that you can buy in 25 your pharmacy is not laced with fentanyl, is it,</p>	<p style="text-align: right;">Page 345</p> <p>1 all of the Defendants, I believe, we are going 2 to hold the deposition open. I think that there 3 are a lot of documents that Mr. Gessner 4 referenced here today that we have not seen, 5 that have not been produced to us, that clearly 6 are relevant, that he would rely on in trying to 7 identify and answer questions. 8 MS. HERMIZ: Can you identify those 9 documents? 10 MS. RENDON: Well, just as a 11 starting example, I believe we received 55 case 12 files. 13 MS. HERMIZ: We have made available 14 to you, I think, at multiple times if you had 15 wanted to inspect the case files yourself, 16 obviously going through from 2006 to 2018. You 17 know, we put it in letters, formal letters. 18 It's a lot of time and resources. And so that 19 request is, you know, still available if you'd 20 like to take that. 21 MS. RENDON: I understand, but I 22 think the obligation is for the Plaintiff, who 23 filed the lawsuit, to produce the documents that 24 are relevant to their claims, and here that 25 would be a claim that the costs associated with</p>



<p style="text-align: right;">Page 346</p> <p>1 the Summit County Prosecutor's Office have  2 increased, I believe you said, by 4.5 million  3 dollars, which, based on Mr. Gessner's testimony  4 today, must have something to do with case  5 files, and so it would then be your obligation  6 to produce to us the relevant case files. So  7 you and I can agree to disagree on that, but  8 that's just one example.  9 And we will try to, as we have  10 consistently in the past, put together for you a  11 list, a letter, of what we think are documents  12 that were identified as a result of  13 Mr. Gessner's testimony here today that have not  14 been produced, and we can address that.  15 MS. HERMIZ: If it's in writing,  16 we'll take it under advisement. Obviously our  17 position is that Mr. Gessner's custodial file  18 production is complete and we have complied with  19 the request to produce responsive documents  20 within that time period.  21 MS. RENDON: And I understand that,  22 and that, actually, raises another issue, which  23 is, to the extent that the e-mails are archived,  24 and we have reason to believe that they are,  25 that just because Mr. Gessner can't access older</p>	<p style="text-align: right;">Page 348</p> <p>1 Whereupon, counsel was requested to give  2 instruction regarding the witness' review of  3 the transcript pursuant to the Civil Rules.  4  5 SIGNATURE:  6 Transcript review was requested pursuant to  7 the applicable Rules of Civil Procedure.  8  9 TRANSCRIPT DELIVERY:  10 Counsel was requested to give instruction  11 regarding delivery date of transcript.  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 347</p> <p>1 e-mails, that the IT department can, that there  2 was an obligation to produce those as well, and  3 we don't have any older e-mails from  4 Mr. Gessner. So that would be another example  5 of a concern that we have with respect to the  6 document production.  7 MS. HERMIZ: Okay. And, again,  8 we'll take that under advisement, but I do  9 believe that we had someone go in through the  10 archive database and produce those documents as  11 well. That's my understanding.  12 MS. RENDON: Anybody, anything else?  13 Thank you very much.  14 MS. HERMIZ: Plaintiffs have no  15 further questions.  16 THE VIDEOGRAPHER: Off the record at  17 6:24.  18  19 (Deposition concluded at 6:24 p m.)  20 - - - - -  21  22  23  24  25</p>	<p style="text-align: right;">Page 349</p> <p>1 REPORTER'S CERTIFICATE  2 The State of Ohio, )  3 ) SS:  4 County of Cuyahoga. )  5  6 I, Renee L. Pellegrino, a Notary Public  7 within and for the State of Ohio, duly  8 commissioned and qualified, do hereby certify  9 that the within named witness, BRAD GESSNER, was by  10 me first duly sworn to testify the truth, the whole  11 truth and nothing but the truth in the cause  12 aforesaid; that the testimony then given by the  13 above referenced witness was by me reduced to  14 stenotypy in the presence of said witness;  15 afterwards transcribed, and that the foregoing is a  16 true and correct transcription of the testimony so  17 given by the above referenced witness.  18 I do further certify that this  19 deposition was taken at the time and place in the  20 foregoing caption specified and was completed  21 without adjournment.  22  23  24  25</p>

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1 I do further certify that I am not a  
 2 relative, counsel or attorney for either party,  
 3 or otherwise interested in the event of this  
 4 action.  
 5 IN WITNESS WHEREOF, I have hereunto set  
 6 my hand and affixed my seal of office at  
 7 Cleveland, Ohio, on this 6th day of December, 2018.  
 8  
 9  
 10  
 11  
 12   
 13 Renee L. Pellegrino, Notary Public  
 14 within and for the State of Ohio  
 15  
 16 My commission expires October 12, 2020.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 Veritext Legal Solutions  
 2 1100 Superior Ave  
 3 Suite 1820  
 4 Cleveland, Ohio 44114  
 5 Phone: 216-523-1313  
 6  
 7 December 6, 2018  
 8  
 9 To: Kristen M Hermiz, Esq  
 10  
 11 Case Name: In Re: National Prescription Opiate Litigation  
 12  
 13 Veritext Reference Number: 3128038  
 14  
 15 Witness: Brad Gessner Deposition Date: 12/3/2018  
 16  
 17 Dear Sir/Madam:  
 18  
 19 Enclosed please find a deposition transcript Please have the witness  
 20 review the transcript and note any changes or corrections on the  
 21 included errata sheet, indicating the page, line number, change, and  
 22 the reason for the change Have the witness' signature notarized and  
 23 forward the completed page(s) back to us at the Production address  
 24 shown  
 25 above, or email to production-midwest@veritext.com  
 26  
 27 If the errata is not returned within thirty days of your receipt of  
 28 this letter, the reading and signing will be deemed waived  
 29  
 30 Sincerely,  
 31 Production Department  
 32  
 33  
 34  
 35 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3  
 4 ASSIGNMENT REFERENCE NO: 3128038  
 5 CASE NAME: In Re: National Prescription Opiate Litigation  
 6 DATE OF DEPOSITION: 12/3/2018  
 7 WITNESS' NAME: Brad Gessner  
 8 In accordance with the Rules of Civil  
 9 Procedure, I have read the entire transcript of  
 10 my testimony or it has been read to me  
 11 I have made no changes to the testimony  
 12 as transcribed by the court reporter  
 13  
 14 Date Brad Gessner  
 15 Sworn to and subscribed before me, a  
 16 Notary Public in and for the State and County,  
 17 the referenced witness did personally appear  
 18 and acknowledge that:  
 19  
 20 They have read the transcript;  
 21 They signed the foregoing Sworn  
 22 Statement; and  
 23 Their execution of this Statement is of  
 24 their free act and deed  
 25  
 26 I have affixed my name and official seal  
 27 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 28  
 29 Notary Public  
 30  
 31 Commission Expiration Date  
 32  
 33  
 34  
 35

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3  
 4 ASSIGNMENT REFERENCE NO: 3128038  
 5 CASE NAME: In Re: National Prescription Opiate Litigation  
 6 DATE OF DEPOSITION: 12/3/2018  
 7 WITNESS' NAME: Brad Gessner  
 8 In accordance with the Rules of Civil  
 9 Procedure, I have read the entire transcript of  
 10 my testimony or it has been read to me  
 11 I have listed my changes on the attached  
 12 Errata Sheet, listing page and line numbers as  
 13 well as the reason(s) for the change(s)  
 14 I request that these changes be entered  
 15 as part of the record of my testimony  
 16  
 17 I have executed the Errata Sheet, as well  
 18 as this Certificate, and request and authorize  
 19 that both be appended to the transcript of my  
 20 testimony and be incorporated therein  
 21  
 22 Date Brad Gessner  
 23  
 24 Sworn to and subscribed before me, a  
 25 Notary Public in and for the State and County,  
 26 the referenced witness did personally appear  
 27 and acknowledge that:  
 28 They have read the transcript;  
 29 They have listed all of their corrections  
 30 in the appended Errata Sheet;  
 31 They signed the foregoing Sworn  
 32 Statement; and  
 33 Their execution of this Statement is of  
 34 their free act and deed  
 35 I have affixed my name and official seal  
 36 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 37  
 38 Notary Public  
 39  
 40 Commission Expiration Date  
 41  
 42  
 43  
 44

<div data-bbox="769 153 852 180" data-label="Page-Header"><p>Page 354</p></div> <div data-bbox="248 182 847 1031" data-label="Text"><p>1           ERRATA SHEET 2           VERITEXT LEGAL SOLUTIONS MIDWEST 3           ASSIGNMENT NO: 12/3/2018 4 PAGE/LINE(S) /     CHANGE     /REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 Date           Brad Gessner 21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ 22 DAY OF _____, 20_____. 23 _____ 24           Notary Public 25 _____           Commission Expiration Date</p></div> <td data-bbox="857 140 1481 1039"></td>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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